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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1998

Addendum

SWITZERLAND

[29 September 1998]

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INTRODUCTION

In a note dated 10 December 1997, the High Commissioner for Human Rights invited the Government of Switzerland to submit in writing its second periodic report on Switzerland's implementation of the International Covenant on Civil and Political Rights (hereinafter the Covenant)by 17 September 1998. The Government of Switzerland has the honour to submit the present written report, by the due date, to the Human Rights Committee (hereinafter the Committee).

This second report describes developments in the situation in Switzerland since the oral presentation of the initial report to the Committee on 24 and 25 October 1996, with regard to the rights guaranteed by the Covenant.

The Government of Switzerland refers to the text of the initial report, dated 24 February 1995 (CCPR/C/81/Add.8), which the present report supplements and updates. It also refers to the points discussed:

In the introductory statement made during the oral presentation of the initial report;

In the oral replies given by the Swiss delegation during the consideration of the initial report (see the summary records of the Committee's 1537th, 1538th and 1539th meetings; CCPR/C/SR.1537-1539) to the written and oral questions asked by the Committee;

In the additional written replies by the Swiss Government (correspondence of 4 November 1996) to the questions asked by the Committee members during the consideration of the initial report.

The present report has been divided into three parts for the sake of clarity. Part I, entitled "General information", contains comments on general developments since the submission of the initial report in Swiss policy and legislation in the areas covered by the Covenant. Part II deals with those developments in relation to each article of the Covenant. Part III refers to the subjects of concern raised by the Committee in its concluding observations of 8 November 1996 (hereinafter concluding observations; CCPR/C/79/Add.70) on the consideration of Switzerland's initial report.

PART I

GENERAL INFORMATION

A. Switzerland's membership of the United Nations

1. On 1 July 1998, the Federal Council prepared a report on relations between Switzerland and the United Nations in response to a postulate submitted by National Councillor Gross. In the report's conclusion, the Federal Council confirmed that it wished to achieve the strategic objective of joining the United Nations as rapidly as politically possible.

2. The question of Switzerland's membership of the United Nations was raised again following the approval by the National Council, on 9 June 1998, of a Keller parliamentary motion requesting that the Federal Council should prepare another attempt by Switzerland to become a member of the United Nations. The President of the Confederation announced that a preliminary report in favour of membership would be drawn up during the summer of 1998. In addition, a popular initiative in favour of Swiss membership of the United Nations will be launched by an inter-party committee at the end of the summer of 1998.

B. Accession to the Optional Protocol to the Covenant

3. When submitting the initial report, the Swiss delegation indicated that accession to the Optional Protocol was on the agenda of the 1995-1999 legislature (see Feuille fédérale (Official journal of the Confederation) 1996 II, p. 353). This information was interpreted by the Committee (see para. 5 of the concluding observations) to mean that a draft was already being considered by the Parliament. That interpretation is not entirely correct, since no formal draft has as yet been submitted to the Parliament. However, the Federal Council is still determined to accede to the Optional Protocol during the 1995-1999 legislature.

C. Ratification and signature of international instruments

4. Since the presentation of the initial report, Switzerland has ratified two United Nations instruments relating to the protection of human rights:

The 1989 Convention on the Rights of the Child, which was ratified on 24 February 1997 and entered into force for Switzerland on 26 March 1997;

The 1979 Convention on the Elimination of All Forms of Discrimination against Women, which was ratified on 27 March 1997 and entered into force for Switzerland on 26 April 1997.

5. Switzerland has also become party to three regional instruments relating to the protection of human rights:

The 1992 European Charter for Regional or Minority Languages, which was ratified on 23 December 1997 and entered into force for Switzerland on 1 April 1998;

The 1995 Council of Europe Framework Convention for the Protection of National Minorities, which was signed by Switzerland on 1 February 1995 and submitted for parliamentary approval in Federal Council message of 19 November 1997 (Feuille fédérale 1998 I, pp. 1033 et seq.) for ratification later in the year;

The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which was signed and ratified on 2 October 1997 and entered into force for Switzerland on 1 February 1998.

D. Reform of the Federal Constitution

6. The Federal Constitution (Systematic Compendium of Federal Law (RS) 11) is being completely revised. The Federal Council, which is in charge of the

revision work, has drawn up a draft with an explanatory message that was submitted to the Parliament in November 1996 (Feuille fédérale 1997 I, pp. 1 et seq.). The draft is currently being discussed in parliamentary committees and by the National Council and the Council of States. The Federal Assembly is scheduled to adopt the new Constitution in 1998, the 150th anniversary of the Swiss Confederation. The Parliament is expected to take a final vote in late 1998 and the people and cantons will vote in 1999.

7. The constitutional reform has three objectives: to update the Federal Constitution, to reform people's rights and to reform the judiciary. Fundamental rights, which are to be found throughout the Constitution and in various international treaties or have been recognized in the case law of the Federal Tribunal (unwritten constitutional law) and the treaty monitoring bodies, will be listed in a "catalogue". The Federal Council's proposals on the reform of the judiciary are necessary primarily because Federal Tribunal has a chronic backlog. They are also designed to ensure that the Tribunal functions smoothly as a judicial body. Among the proposed amendments, the extension of constitutional jurisdiction is a particularly significant innovation. A draft new act on the Federal Tribunal is also being discussed. It will replace the Federal Judicial Organization Act (OJF; RS 173. 110), of 16 December 1943 and some sections of the Federal Act of 15 June 1934 on Criminal Procedure (PPF; RS 312.0). The present report makes frequent reference to the draft reform of the Federal Constitution.

E. Ongoing revision of federal statutes

8. The Swiss Civil Code (CCS; RS 210) is currently being raised. The revision, which relates to civil status, marriage, divorce, filiation, alimony, homesteads, guardianship and marriage brockerage, was adopted by the Parliament on 26 June 1998. It should enter into force on 1 January 2000 at the latest.

9. The general part of the Swiss Penal Code (SPC; RS 311.0) is also being revised and there is a draft federal act governing the status of minors in criminal law.

10. In early 1998, a commission of experts submitted a report aimed at unifying the different cantonal laws on criminal procedure. The main purpose of the report is to present the possible characteristics of a future code of criminal procedure applicable throughout Switzerland. The above-mentioned reform of the judiciary will lay the constitutional foundations for the unification of civil prodecure and criminal procedure.

11. The Federal Asylum Act(LA; RS 142.31) is being completely revised. Certain urgently needed provisions on measures to combat illegal entry into Switzerland entered into force on 1 July 1998. The draft revision also contains updates of the Federal Act on the Temporary and Permanent Residence of Foreigners(LSEE; RS 142.20). It was adopted by the Parliament on 26 June 1998.

12. In the present report, these draft revisions will be discussed in relation to the relevant articles of the Covenant.

F. Case law of the Federal Tribunal relating to the Covenant

13. During the period under review, the Federal Tribunal handed down many decisions relating to the rights and guarantees embodied in the Covenant (24 published and, 23 unpublished decisions). It is worth noting not only that a large number of decisions were handed down, but also that the Covenant is taking on greater importance in the Federal Tribunal's case law. The most significant decisions will be mentioned in relation to the relevant articles of the Covenant.

PART II

ARTICLE-BY-ARTICLE CONSIDERATION OF THE IMPLEMENTATION OF THE RIGHTS GUARANTEED BY THE COVENANT

(since the submission of the initial report)

Article 1

Right to self-determination

14. With regard to developments relating to article 1, paragraph 2, and mentioned in the initial report (paragraph 5), the duty on gunpowder (i.e. the Confederation's monopoly on the manufacture and sale of gunpowder) was abolished on 1 April 1998 (repeal of art. 41, para. 1, of the Constitution).

Article 2

Non-discrimination in the enjoyment of the rights recognized in the Covenant

Constitutional reform

15. The general principle of equality and non-discrimination embodied in article 4 of the present Federal Constitution made for well-established legal practice the draft reform of the Federal Constitution leaves intact. Article 7 of the draft reform provides that:

> "Article 7. Principle of equality
> 1. All men are equal before the law.
>
> 2. No one shall be subjected to discrimination on the grounds of origin, race, gender, age, language, social class, lifestyle, religious, philosophical or political convictions or mental or physical handicap."
>
> (Paragraph 3 of this article deals with the principle of equality between men and women, which will be considered in connection with article 3 below.)

16. In comparison to the existing text, draft paragraph 1 contains a change of wording: it is now clearly stated that all men and not just all Swiss citizens are entitled to the right to equality. This adaptation was made necessary by the fact that the case law of the Federal Tribunal and legal writings have long

given foreigners the possibility of invoking article 4 of the Constitution (see initial report, para. 10).

Non-discrimination of the disabled

17. In October 1995, a parliamentary initiative (the Suter initiative) was submitted with the aim of including a provision in the Federal Constitution on equal rights for the disabled. Not only is the proposed provision aimed at the Confederation, the cantons and the communes, but, by virtue of its scope, it also has direct implications for third parties (horizonal effects).

18. In the framework of constitutional reform, the Federal Chambers decided to introduce a paragraph on legislative measures to give effect to of the principle of non-discrimination of the disabled. Thus, according to the Council of States version, the law should contain measures aimed at eliminating existing inequalities; according to the broader National Council version, the law should provide for the equality of disabled persons and for measures to eliminate or compensate for existing inequalities.

Prohibition of racial discrimination

(a) Initial report by Switzerland to the Committee on the Elimination of Racial Discrimination (CERD).

19. Switzerland submitted its initial report (CERD/C/270/Add.1) to the Committee on the Elimination of Racial Discrimination on 3 and 4 March 1998 (see CERD/C/SR.1248 and 1249). In its concluding observations (CERD/C/304/Add.44), the Committee welcomed the adoption of new criminal legislation on racial discrimination (see subpara.(b) below) and the establishment of the Federal Commission against Racism (see subpara.(c) below). It expressed a number of concerns (see subpara.(c) and para. 38 below) and made recommendations to the Swiss authorities thereon. The measures taken will be described in the next periodic report to the Committee.

(b) Article 261 bis of the Swiss Penal Code

20. Mention must be made of the adoption, on the occasion of Switzerland's accession to the International Convention on the Elimination of All Forms of Racial Discrimination, of article 261 bis of the Swiss Penal Code (and art. 171c of the Military Penal Code).

21. Article 261 bis criminalizes the following acts:

Public incitement to racial hatred and racist propaganda (paragra. 1);

Attempts to deny, grossly minimize or justify genocide or other crimes against humanity (para. 4);

Refusal to provide a public service such as access to a public building, on grounds of race, ethnic group or religion, (para. 5).

22. Such acts are automatically prosecuted and the persons who commit them are liable to imprisonment or a fine.

23. Article 261 bis entered into force on 1 January 1995. To date, just under 30 sentences have been handed down at the cantonal level. In July 1998, for the first time the Baden District Court sentenced a revisionist author and his publisher to one year's imprisonment and more on the basis of the anti-racist legislation. They were also fined. Convicted persons can nevertheless appeal.

24. On 5 December 1997, the Federal Tribunal handed down the first decision under the new criminal provision (Official Compendium of Swiss Federal Tribunal Decisions (ATF) 123 IV 202). The case involved the dispatch of several letters with anti-Semitic content. The Federal Tribunal upheld the suspended four-month sentence and the fine of Sw F 5,000 imposed on the applicant.

25. In another decision handed down on 30 April 1998, the Federal Tribunal considered that, even in the absence of any wrongdoing, racist literature could be confiscated and destroyed. It thus upheld a decision by the Neuchâtel Cantonal Tribunal ordering the destruction of 20 journals and 30 CDs of a racist nature, even though the person they were sent to was not convicted of any offence.

26. Swiss legislation (in particular, the Federal Act on Assistance to Crime Victims of 4 October 1991; RS 312.5) enables the victims of racist attacks to obtain redress, even though that legislation has to date not been enforced very frequently. Recently, in the canton of Zurich, a person who had insulted a police officer in racist terms was obliged to pay the victim Sw F 1,000.

27. Training programmes have been set up for police officers and prison guards primarily in order to lower the number of cases of police brutality against foreigners. These programmes will be consolidated in accordance with the recommendations of the Committee on the Elimination of Racial Discrimination.

(c) Federal Commission against Racism

28. Following Switzerland's accession to the International Convention on the Elimination of All Forms of Racial Discrimination, the Federal Council decided, on 23 August 1995, to establish the Federal Commission against Racism (CFR). The Commission's terms of reference are:

> "To concern itself with racial discrimination, to promote better understanding between persons of different races, colours, origins, ethnic or religious origins and to combat all forms of direct and indirect racial discrimination, attaching particular importance to effective prevention."

CFR is free to determine its basic activities.

29. During the first two years of its existence, it worked on:

The situation of travellers and the Jenisch;

The integration of foreigners and the possible effects on racism and xenophobia;

The situation of Muslims in Switzerland;

The resurgence of anti-Semitism as a result of the discussion on Jewish dormant accounts.

30. Preventive measures are the main focus of the activities of CFR, which has:

Launched a publicity campaign (which received a United Nations award);

Launched a workplace campaign in the form of a newsletter for employers and young employees;

Worked in cooperation with research institutes and researchers to promote research on racism, xenophobia and anti-Semitism;

Publish a biannual bulletin, each issue dealing with a specific topic.

The bulletin is distributed free of charge to members of the Parliament, the 3,000 Swiss communes, cantonal libraries, etc. It has a print run of 7,000 copies;

Made contact on many occasions with the federal, cantonal and local authorities to draw their attention to problems of direct or indirect racial discrimination. It places special emphasis on the responsibility of the authorities to act ex officio with regard to the new article 261 bis of the Swiss Penal Code;

Acted as a mediator in the role of ombudsman entrusted to its president. This role is nevertheless limited by the fact that the CFR has only consultative Status.

(d) Racist propaganda on the Internet

31. Measures have been taken to combat racist propaganda on the Internet. Recommendations have been made for Internet service providers (in this regard, see the report of an interdepartmental group on questions of criminal law, data protection and copyright law raised by the Internet; Federal Office of Justice, Berne, May 1996). An "Internet patrol" was established in the Federal Office for police matters in January 1998. Although it cannot institute its own inquiries, the patrol coordinates inquiries between cantons and handles cases that the cantons delegate to it (search for the author and the provider, then referral of the matter to the cantonal police with a recommendation to shut down the site, if necessary). In July 1998, the federal police shut down a dozen extremist sites.

(e) Integration of foreigners

32. The Federal Commission on Foreigners (CFE), set up in 1970 by simple decision of the Swiss Government, was registered in the LSEE by the Parliament in June 1998 when the LSEE was partially amended. The Federal Council is thus authorized to institute CFE on that legal basis and CFE can also propose the payment of integration subsidies (new art. 25(a)) and to give its opinion on applications for subsidies. The cantons, communes or third parties must nevertheless share in project funding.

33. In 1995, the Federal Council gave CFE a mandate to prepare a report for consideration by the Federal Council and the Parliament, on Switzerland's future social integration policy. In 1996 and 1997, broad consultations were held on the preliminary draft report, both in writing and in national meetings on integration, with all Swiss and foreign agencies concerned. The report should be ready by late 1998.

Limitations on the principle of equality based on nationality

(a) Case law of the Federal Tribunal

34. Even though everyone has the constitutional right to equality, the criterion of nationality may constitute objective grounds for a difference in treatment (see initial report, para.13).

35. In this respect, the Federal Tribunal recently handed down two decisions clearly stating its position on the conditions in which foreigners may claim freedom of trade and industry.

36. In a decision of 26 February 1997 (ATF 123 I 19) on access by foreigners to legal interneeships, the Federal Tribunal considered that a foreigner holding only an annual temporary residence permit, which is subject to the restrictions set by the Aliens' Registration Office, cannot in applying to register for a law interneeship, claim the same freedom of trade and industry as is granted foreigners holding permanent residence permits.

37. In another decision dated 4 July 1997 (ATF 123 I 212), the Federal Tribunal nevertheless considered that a foreigner who is exempted from the restrictions and who is entitled to renew his temporary residence permit under article 7, paragraph 1, of the LSEE can claim freedom of trade and industry.

(b) Abolition of the "three circle" policy

38. When Switzerland submitted its initial report to the Committee on the Elimination of Racial Discrimination (see concluding observations of the Committee on the Elimination of Racial Discrimination of 19 March 1998, para. 6; CERD/C/304/Add.44), the Committee expressed concern about the "three circle" policy introduced in the early 1990s for the recruitment of foreign workers (N.B. this model divides recruitment countries into categories: first, the member States of the European Union and the European Free Trade Association, with which the aim is the gradual achievement of reciprocal free movement of persons; secondly the traditional recruitment countries (basically those in North America); and, thirdly, the non-traditional recruitment countries (all others)).

39. Within the framework of the ongoing process of amending the law relating to aliens, the three circle model will be abolished and replaced by a dual system for the recruitment of foreign workers. According to the wishes of the Federal Council, persons who are not citizens of EU or EFTA member States and who have a particular skill may be recruited in Switzerland. Individuals may also be admitted as part of further training programmes linked to aid and development projects and for humanitarian reasons.

(c) Political speeches by foreigners

40. The Committee recommended that the Federal Decree of 24 February 1948 on political speeches by foreigners should be repealed or amended to bring it into line with article 19 of the Covenant on freedom of expression (paras. 17 and 18 of the concluding observations). The Federal Council repealed the Decree on 9 March 1998.

Limitations on to the principle of equality based on language, opinion or religion

41. Discrimination based on language (see initial report, para. 21), opinion or religion (see initial report, para. 22) will be considered in the chapters on articles 27, 18 and 19 of the Covenant respectively.

Article 3

Equality between men and women

International law

42. On 27 March 1997, Switzerland ratified the 1979 Convention on the Elimination of All Forms of Discrimination against Women, which entered into force for the country on 26 April 1997.

43. The Fourth World Conference on Women, held in Peking from 4 to 15 September 1995, adopted a joint Declaration and, with its Platform for Action, created a new new basis for work on enhancing the status and rights of women throughout the world. After taking note of the Swiss delegation's report on that Conference, the Federal Council set up a working group within the administration composed of members of more than 10 different offices. The working group was instructed to look into the possibility of implementing the Peking Platform for Action in Switzerland and to draw up a Swiss plan of action for the Federal Council. Consultations with the offices on the plan of action took place during the summer of 1998. Publication of the plan of action is scheduled for the near future.

Constitutional reform

Article 7, paragraph 3, of the draft amendment provides that:

"Men and women have equal rights. The law provides for equality, in particular in the areas of the family, education and work. Men and women are entitled to equal pay for work of equal value."

Draft revision of the Swiss Civil Code

44. The aim of the current revision of the Swiss Civil Code is to bring about equality between men and women in the area of family law (civil status, conclusion of marriage, divorce, rights of the child, obligation to assist parents, property to which certain privileges attach for the owner and his or her family, guardianship and mediation in the event of divorce). Mention should also be made of the following innovations:

The economic situation of divorced women has improved considerably as a result of the splitting of departure benefits acquired in professional provident societies during the marriage;

The opportunity for divorced parents to exercise joint parental authority is another measure likely to bring about the legal equality of the sexes;

The right to alimony following divorce is, in principle, independent of the notion of fault: alimony is calculated according to objective criteria, such as the distribution of tasks during the marriage, the length of the marriage and the spouses' income and assets, as well as age and state of health;

Different treatment of men and women is also eliminated in other areas governed by the Civil Code. Article 382, paragraph 1, thus hitherto applicable only to men provides that the obligation to assume guardianship functions, will also apply to women;
Other legislative amendments with regard to family name and communal and cantonal citizenship, are being made in order to ensure broad conformity with the principle of equality of men and women.

Political participation, female quotas

45. In recent years, efforts have been stepped up to use political measures to raise targets and include provisions on quotas with a view to increasing the proportion of women in government, universities, courts and political bodies.

46. At the federal level, the popular initiative entitled "For the equitable representative of women in all Federal departments" has obtained the required number of signatures. It calls or the equitable representation of women in all Federal departments, including the National Council and the Council of States, the Federal Council and the Federal Tribunal, as well as balanced representation in the public administration and higher educational establishments. Under this initiative, male and female cantonal representation in the National Council can no longer differ by more than one seat. Each canton is required to elect one male and one female councillor to the Council of States and the demi-cantons are required to elect a man or a woman. At least three of the seven federal councillors and at least 40 per cent of judges and alternates of the Federal Tribunal must be women. Considering that this popular initiative placed unwarranted constraints on voting freedom, the Federal Council recommended, in its message of 17 March 1997 (Feuille fédéral 1997 III, p.489), that the Parliament should reject it and submit it to a referendum without a counter-proposal.

47. The National Council's Political Institutions Commission recommended that the term for dealing with the initiative should be extended by one year and that an amendment to the law on political rights should be put forward as an indirect counter-proposal to the initiative so as to introduce quotas in the electoral rolls for the National Council (quotas of 30 per cent of women on the electoral rolls for up to three legislatives terms). This amendment should take effect during the 1999 elections and should therefore be referred to both Councils at the autumn 1998 session or winter 1998 session at the very latest.

48. In May 1998, the Federal Commission for Women's Issues and the women of six political parties called on the parties to take active measures in preparation for the 1999 federal elections. In the inter-party manifesto they submitted, entitled "More women in Parliament", they stressed that the 1999 federal elections must be used to increase women's representation in the National Council (currently 43 of 200 seats) and in the Council of States (currently 8 of 46 seats), and that this must be done in all parties. The political parties have a key role to play: the onus is on them to give their women candidates genuine opportunities for election. To that end, the party leadership must clearly show that it intends to ensure equal representation on all rungs of the political ladder. The manifesto also advocates fixing a quota in the various party organs. Specific structures for women must be established in the parties and persons in charge of equality appointed.

49. On 19 March 1997, the Federal Tribunal handed down a ruling on the admissibility of a quota regulation (ATF 123 I 152). The federal judges rejected the Solothurn popular initiative entitled "For representation with equal rights of women and men in cantonal departments"("Initiative 2001"), thereby upholding the 13 February 1996 decision of the Solothurn Council of State. The Federal Tribunal deemed that such a regulation constituted a disproprtionate breach on the prohibition of discrimination between the sexes and that it violated the general and equal right to vote and to be elected, which as is guaranteed by the Federal Constitution.

50. Pursuant to the Federal Council's directives for improving the representation and professional status of female personnel throughout the Federal Administration, the Federal Post Office and Telephone Services (PTT)and the Federal Railways adopted guidelines along the same lines on 3 August and 14 September 1993, respectively.

51. Article 10 of the Order on extra-parliamentary commissions, policy-making bodies and representatives of the Confederation (Order on Commissions) of 3 June 1996 stipulates that the representation of either sex on a commission may not be lower than 30 per cent and that the aim is eventually to achieve equal representation of the sexes. If the proportion of men or women is lower than 30 per cent, the Federal Chancellery requires a written justification from the appropriate department (these quotas already appeared in the earlier directives of 1 April 1992).

52. In its reply to the urgent Bühlman parliamentary question of 6 March 1997 concerning the proportion of women on extra-parliamentary commissions and the implementation of article 10 of the Order on Commissions, the Federal Council pointed out that the proportion of 30 per cent envisaged for the commissions subject to the Order had been more or less achieved (27.7 per cent).

53. In October 1993, an equal opportunities post was created at the Zurich Federal Polytechnic (EPFZ). In 1996 and 1997, various measures were taken, without setting quotas or objectives, to increase the proportion of women at all levels at the Zurich Polytechnic (EPFZ) and at the Lausanne Polytechnic (EPFL) (in so far as possible, by giving preferential consideration to applications from women). The general guidelines for increasing the proportion of women in the Federal Administration also apply in these higher educational establishments.

Implementation of the 1986 legislative programme

54. Most regulations that allowed of different treatment between men and women (direct discrimination) have been repealed, particularly in the field of old-age insurance payments, the rights of aliens, acquisition of Swiss nationality and marriageable age.

55. Among persisting disparity in treatment, mention should be made of the problem of equality when choosing the family name. As stated above, there are plans to amend the provisions of the Swiss Civil Code that concern the family name of spouses on an egalitarian basis. The proposed amendments were widely approved during the consultation procedure.

56. Many regulations, which do not formally provide for different treatment for men and women, but which, nonetheless, penalize women on account of their relationship to and role vis-à-vis men, are yet to be amended (elimination of acts of indirect discrimination), especially in respect of social insurance, tax law and civil service regulations.

Significant regulations for women (not included in the legislative programme)

(a) Social insurance

57. Social insurance is covered by the International Covenant on Economic, Social and Cultural Rights and it will be explained in detail in the Swiss Government's report on the implementation of that Covenant.

58. The new Federal Health Insurance Act (LAMal; RS 832.10), which entered into force on 1 January 1996, provides for compulsory medical and pharmaceutical insurance for the entire population and an optional cash benefit daily insurance. The Act has increased maternity specific care and the duration of payments of possible daily maternity cash benefits has been increased from 10 to 16 weeks.

59. The tenth review of amendment to the Federal Old-age and Survivors' Insurance Act (LAVS; RS 831.10) entered into force on 1 January 1997. It represents a vital stage in the achievement of equality of rights between men and women. It provides for individual pensions regardless of the beneficiaries' marital status; allocates bonuses for educational or assistance tasks in the form of "national" income payments; divides up the income earned during the marriage benefits calculated on the basis of the "splitting" system); and introduces a widower's pension (although on more restrictive terms than the widow's pension). This amendment raises the retirement age for women by two years, moving it up to 63 in 2001 and 64 in 2005, thus reducing the disparity with the retirement age for men. It also introduces the possibility of bringing payment of old-age pension forward by as much as two years.

60. Work on the eleventh amendment of LAVS has begun. One of its aims is equality between men and women with regard to retirement age and the surviving spouse's pension.

61. On 25 June 1997, the Federal Council adopted the bill and "Message" relating to maternity insurance (Feuille fédérale 1997 IV, p.881). In a

manifesto of 25 November 1997, manifesto, 30 women's rights organizations supported the Federal Council's bill, which, they regard as the minimum solution, but one which will solve the problem (the constitutional provision dates back to 1945). In the summer of 1998, the Parliament agreed to include the Federal Council's bill on its agenda. The main differences of opinion relate to how this insurance is to be funded.

(b) Permanent and temporary residence, right of asylum

62. The National Council accepted a parliamentary initiative providing for the right to temporary residence regardless of civil status and to a work permit independent of the spouse's. The competent commission of the National Council is currently preparing legislation on the subject. One of the aims is to enable a woman migrant to leave a violent husband without risking deportation from Switzerland.

63. With regard to interviews for asylum, the guidelines of the Federal Refugee Office now provide for a separate interview for the wives of asylum seekers. Sexual violence against female applicants must be increasingly taken into account as a reason for prohibiting deportation.

64. The concept of "refugee" has been fleshed out during parliamentary debates in connection with the amendment of the Asylum Act so that reasons specific to women (for example, attacks on their sexual integrity) may also be taken into account in deportation rulings.

(c) Violence against women

65. Unfortunately, this phenomenon also exists in Switzerland. A preliminary representative study on the subject revealed that one fifth of women in Switzerland had at some time in their lives been victims of physical or sexual violence inflicted from by their partners.

66. The first hostel for girls who have been victims of violence opened its doors in Zurich in August 1994. It provides counselling and accommodation for young women aged 14 to 21, thus adding to the many homes in Switzerland's cantons providing assistance to women in distress.

67. In 1997, the Swiss Conference of Delegates for equality conducted an information and awareness-raising campaign throughout Switzerland on the theme of "Violence against women in marriage or partnership".

68. Women who have suffered a direct attack on their physical, psychological or sexual integrity during the commission of a crime may receive benefits and assistance provided for under the Federal Act on Assistance to Victims of Crime, whether or not the offender has been identified and whether or not his conduct is wrongful. The Act has three sectors: counselling; the protection of the victim and her rights in criminal proceedings; compensation and non-pecuniary damages. The cantons are required to make counselling centres available to victims to offer medical, psychological, social, material and legal assistance. The services provided by these centres are free of charge. The authorities must protect the victim's physical integrity at all stages of the criminal proceedings. In the case of attacks on sexual integrity, a confrontation may be ordered only if the defendant's right to be heard incontrovertibly requires

it and if it takes place in camera at the victim's request. Moreover, all victims of crimes committed in Switzerland are entitled to compensation or non-pecuniary damages from the State if they fulfil the conditions laid down by law.

(d) Equality in professional life

69. With regard to the content of and the guarantees offered by the Federal Act on Equality (LEg; RS 151), the Swiss Government refers to the details given on 24 October 1996 during the oral presentation of the initial report (see the summary record of the 1537th Meeting of the Human Rights Committee, para. 15) and to subject of concern in part III of this report, paras. 249-265).

70. A number of decisions in first instance have been handed down under the Federal Act on Equality since its entry into force on 1 July 1996. By way of illustration, a court in the canton of Vaud is hearing a "test" case involving wage discrimination against a female employee of a firm in the Lausanne region who is paid less than her male colleagues who do the same work with identical, or fewer, professional qualifications.

71. Many decisions in first instance have been appealed. Several cases are currently pending before the Federal Tribunal, which has already handed down six judgements on the basis of the Federal Act on Equality.

72. Thanks to conciliation offices, increasing numbers of disputes are being settled out of court. In this regard, the Federal Act on Equality serves as a deterrent: to avoid falling foul of the law, employers are being increasingly careful about equal treatment in the workplace and non-discriminatory wages.

73. The Confederation may allocate financial assistance in support of programmes designed to promote de facto professional equality between men and women. Most requests for financial assistance come from women's organizations. Trade unions have played an important role. Other organizations concerned include employers' organizations, professional associations and various agencies. The requests cover a wide variety of areas, such as compatibility between profession and social duties; professional choices; improvement of the status of women in craft, technical and academic professions, reintegration and life-long training, independence; of business reorganization processes; and working conditions.

Offices for Equality and the Federal Commission for Women's Issues

74. The Swiss Conference of Women Delegates for Equality (composed of the Offices of Equality between Men and Women) has conducted joint activities throughout Switzerland, such as the 1996 campaign to prevent violence against women (see paras. 65-68 above).

75. In the spring of 1997, the Parliament adopted the Federal Order on Apprenticeships (Official Compendium of Federal statutes(RO) 1997, p.1031), which provides for financial support for measures to improve the supply of apprenticeship places. In this context, attention is drawn to the campaign for motivating women and for equality of opportunity between the sexes. The Confederation has made Sw. F 60 million available for this purpose for the 1997, 1998 and 1999 training years.

76. The Swiss Conference of Delegates for Equality is contributing a project, under the Federal Order on Apprenticeships, to improve the apprenticeship situation of young women. The project will focus on the following main points:

Linkage, information and transfer of projects based on a policy of equality;

Removal of the obstacles facing young women in their choice of occupation and vocational training (for example, measures for women whose only training is that provided during compulsory schooling);

Expansion of training opportunitites for young women (for example, developing training units in data processing and for skilled medical jobs).

77. The Federal Commission for Women's Issues has continued its task of raising awareness among political parties, the media and the electorate. It has focused on vote forecasting (see para. 48 above) and intensified its general efforts to provide information on the various aspects of the policy of equality.

78. Other aspects (training, household work, professional activity, financial resources, policy) have been covered in a variety of publications of the Federal Statistical Office, including the following titles:

"Vers l'égalité? Actualisation des principaux indicateurs 1997" (Towards equality? Most recent principal indicators 1997);

Vers l'égalité? La situation des femmes et des hommes en Suisse - Deuxième rapport statistique" (Towards equality? The situation of men and women in Switzerland - second statistical report);

"La représentation des femmes dans les exécutifs communaux en 1997" (Women's representation in communal executive councils in 1997);

"Les femmes et les élections au Conseil national de 1995" (Women and the 1995 elections to the National Council);

"La difficile conquête du mandat de députée. Les femmes et les élections au Conseil national de 1971 à 1991" (The problems women face in getting elected as deputies. Women and the elections to the National Council from 1971 to 1991).

Article 4

Derogations from the rights recognized in time of emergency

79. The information provided by Switzerland in its initial report is still valid (see paras. 59-65).

Article 5

Prohibition of abuse of rights. Precedence of the most favourable legislation

80. The information supplied by Switzerland in its initial report is still valid (see paras. 66-67).

Article 6

Right to life

81. In October 1995 the Federal Tribunal admitted the existence of the unwritten enforceable constitutional right to a living wage (ATF 121 1 367). The Federal Tribunal determined that the satisfaction of basic human needs is a prerequisite of a democratic system and the rule of law. In its judgement, it summarized the doctrine linking that right to the constitutional principle of human dignity, which guarantees all persons what they may expect from the community precisely because they are human beings; to the right to life as a fundamental component of liberty of person, which would no longer to be protected if the barest conditions of survival were not guaranteed; to liberty of person as a guarantee of all basic manifestations of development of the personality; and to equality, which also serves to guarantee basic material justice. It observed that the right to a living wage applies not only to Swiss nationals, but also to foreigners, regardless of their residence status. The Tribunal spelled out the scope and limits of this fundamental right in other rulings (e.g. ATF 122 II 193; 122 I 101).

82. The Federal Tribunal's new decision is reflected in article 10 of the draft reform of the Federal Constitution, which embodies the "right to receive assistance in situations of distress". Draft article 9 also expressly provides for the right to life and prohibits the death penalty.

83. The Federal Tribunal's 1995 ruling in which it recognized the constitutional right to a living wage led to the initiative of the Council of Europe's Steering Committee for Human Rights on a discussion of the right to satisfaction of basic material human needs and the possibility of having that right upheld in the courts. The question of the international instrument which might give effect to that right is, however, still wide open.

Article 7

Prohibition of torture

Third periodic report of Switzerland to the Committee against Torture

84. Switzerland submitted its third periodic report (CAT/C/34/Add.6) to the Committee against Torture on 14 November 1997 (see CAT/C/SR.307-308). In its concluding observations (CAT/C/XX/ISC.1), the Committee noted that no governmental or non-governmental body had confirmed the existence of cases of torture. It also took note of the revision of a number of provisions of the codes of criminal procedure of various cantons to strengthen the rights of the defence and the rights of persons in pre-trial detention (for further details, see part III of the report on to subjects of concern III, VI and VII).

Communications to the Committee against Torture

85. Since the entry into force for Switzerland of the United Nations Convention against Torture on 26 June 1987, the Committee against Torture has dealt with 22 communications filed against Switzerland: four were declared inadmissible, four were taken off the list and six are still pending. The Committee found that, three of the eight cases considered as to the merits, the decisions to return the petitioners to countryies where, according to the Committee, there were serious grounds for believing that they were liable to be tortured were contrary to article 3 of the Convention.

Second periodic visit to Switzerland by the European Committee against Torture

86. As stated in the introduction to the initial report, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) made its second periodic visit to Switzerland in February 1996. On that occasion, it inspected some 30 establishments in the Cantons of Bern, Geneva, Ticino, Vaud, Valais and Zurich used for police custody, preventive detention, imprisonment and psychiatric care and as shelters for asylum-seekers. It visited some of those establishments for the first time in 1991; material conditions of detention were criticized, but, during its 1997 visit it found some improvements. It found no evidence of torture in Switzerland. However, it did note allegations of inhuman or degrading treatment (on this subject, see part III of the present report on subject of concern III, paras. 266-271). All in all, it said that it was satisfied with its visit to Switzerland. Its detailed report was submitted to the Federal Council, which published it in 1997, together with the position adopted by the Federal Government and the cantons visited by the CPT. A follow-up report by Switzerland was published in December 1997.

Principle of non-refoulement

(a) General

87. The principle of non-refoulement, guaranteed by the Convention relating to the Status of Refugees, the Convention against Torture, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and article 7 of the present Covenant, is part of peremptory public international law jus cogens. Effect is given to this principle in, for example, article 14 a of the LSEE article 45 of the Federal Asylum Act, and article 37 of the Federal Act on International Mutual Assistance in Criminal Matters. The Federal Tribunal takes it into account in its settled judicial practice extradition (e.g. ATF 123 II.511; 122 II 373; 121 II 296) and expulsion (ATF 122 II 433).

(b) Popular initiatives relating to the right of asylum

88. During the consideration of the admissibility of two popular initiatives relating to the right of asylum, the Federation Council also referred expressly to the principle of non-refoulement, citing the Covenant, among other texts:

> "In addition to the above-mentioned Conventions, refoulement is prohibited by articles 6 and 7 of the International Covenant on Civil and Political Rights. Those provisions embody the right to life and the prohibition of torture. The Committee applies them in conjunction with

article 2 of the Covenant for the purpose of reviewing cases from a non-refoulement point of view (United Nations Human Rights Committee, Geneva/New York, Decision of 30 July 1993, Kindler v.Canada, communication No. 470/1991, cited in the Human Rights Law Journal 1993, pp.307 etc.(seq.)). Consequently, Switzerland is bound to determine, for any person seeking asylum, whether one of the dangers described above exists (so-called non-refoulement review) and, if it does, to refrain from returning the person at risk. These provisions prohibiting refoulement would be manifestly and grossly violated by paragraphs 1 and 4 of the initiative, since they do not authorize the consideration of cases from the non-refoulement point of view and require the immediate return of the person concerned, even if he would be in danger. They would also be contrary to article 13 of the European Convention on Human Rights, which guarantees the right to an effective remedy in the event the Convention is violated" (Feuille fédérale 1994 III, p.1485).

On the basis of this review, the Federal Council declared the popular initiative entitled "For a reasonable asylum policy" invalid. The second popular initiative, entitled "Against clandestine immigration", could be interpreted as being in conformity with public international law and, as such, was considered valid. The Federal Council recommended that the Swiss people and cantons should reject it. The Federal Assembly endorsed that view (see additional written replies of the Swiss Government of 4 November 1996, pp. 1 and 2). The Swiss people and the cantons voted against this initiative on 1 December 1996.

89. A new popular initiative, entitled For "regulations on immigration", was submitted on 28 August 1995. Its aim is to limit the proportion of foreign nationals in the entire resident population to 18 per cent. Although the Federal Council determined that the initiative could be contrary to international conventions, both in the economic and humanitarian law fields, it concluded that the text of the initiative could be interpreted as being in conformity with the principle of compatibility with public international law. It therefore proposed that the Parliament should regard the initiative as valid and submit it to the people and the cantons without a counter-proposal, recommending that they should reject it (see Feuille fédérale 1997 IV, pp. 441 et seq.).

(c) Right of asylum

90. While 18,000 applications for asylum were recorded in 1996, there were 24,000 in 1997. Between January and April 1998, 10,005 people filed applications for asylum in Switzerland, an increase of 50.5 per cent or 3,355 persons compared to the previous year. The Federal Asylum Office expected a further 32,000 applications in 1998. The Parliament considered that emergency measures must be taken to combat the abuses detected in the asylum sector if Switzerland is to maintain the humanitarian policy it practices in respect of genuine victims of persecution. These emergency measures entered into force on 1 July 1998. Various political circles immediately announced their decision to call for a referendum against the measures.

91. The emergency measures provide that an application for asylum will not be considered when the applicant fails to produce documentation to prove his identity or has lied to the authorities about his identity. Applicants are

given 48 hours after filing their asylum application to submit their travel documents or other papers by which they can be identified. When there is evidence of persecution which is plainly not unfounded, the asylum-seeker may obtain a decision on the merits and the immediate enforcement of his return will not be ordered. This possibility is offered at a hearing before the cantonal authorities, at which the asylum-seeker is assisted by a support service representative (arts. 15 and 15A of the Asylum Act).

92. Another case of non-consideration is one where the asylum application is filed by an applicant residing in Switzerland illegally with the obvious intention of avoiding the imminent enforcement of an expulsion or return order. However, if the applicant has been unable to file an application earlier because of illness, for example or cannot reasonably have been expected to do so, for instance, in cases of obvious trauma, the asylum application should be taken up and the reasons for flight should be considered as to the merits, provided that evidence of persecution is supplied at the hearing. The immediate enforcement of the return will then not be ordered.

93. This procedure also takes account of the fact that there may be genuine refugees among the persons concerned. It must also be stressed that the asylum-seeker may always appeal a non-consideration decision under article 11 of the Asylum Act.

94. The total recasting of the Asylum Act involves a fundamental change in the existing legislation, with the introduction of the concept of "persons to be protected", who may be granted "temporary protection". Switzerland intends to grant its protection not only to refugees, but also to "persons in need of protection", who do not meet the conditions of the Convention relating to the Status of Refugees or of the Asylum Act: such persons flee their countries for reasons of war, widespread violence or grave or systematic human rights violations, without necessarily always being personally exposed to the danger of cruel, inhuman or degrading treatment or punishment. If the situation in their countries of origin does not improve, such persons may obtain permission for a limited stay, five years after the granting of temporary protection, and an authorization for permanent residence 10 years later. They are entitled to the right to family reunification once temporary protection has been granted.

(d) International mutual assistance in criminal matters

95. With regard to the principle of non-refoulement, it should be pointed out that, following the revision of the Federal Act on Mutual Assistance in Criminal Matters (EIMP), the Covenant is now expressly referred to (art. 2(a) of EIMP) in addition to the European Convention on Human Rights. This reference was necessary because EIMP also applies to mutual assistance relations with States that have not acceded to the European Convention on Human Rights (Feuille fédérale, 1995 III, p.16). The purpose of the revised article 2(a) of EIMP is to prevent Switzerland from providing support, through mutual judicial assistance or extradition, for procedures which would not guarantee the person being prosecuted a minimum standard of protection equal to that offered by the law of democratic States, as defined, in particular, by the European Convention on Human Rights and the Covenant, or which would conflict with rules recognized as belonging to public to international law. The Federal Tribunal is thus regularly called on to decide whether the guarantees provided for by foreign procedures are in keeping with the Covenant. Switzerland would be breaching its international obligations if it extradited a person to a State where there are

serious grounds for thinking that the person runs the risk of treatment contrary to the European Convention on Human Rights or the Covenant (e.g. ATF 123 II 595, preambular para. 7(b), pp. 615/616; 123 II 511, preambular para. 5(a), p. 517; 123 II 161, preambular para. 6(a), pp. 166/167).

Medical experimentation

96. On the subject of medical experimentation described in paragraph 96 of the initial report, it should be pointed out that, at its 627th meeting, the Committee of Ministers of the Council of Europe adopted Recommendation No. R (98) 7 concerning the Ethical and Organisational Aspects of Health Care in Prison, which will be applied in Switzerland.

Human rights education

97. Concerning human rights education for law enforcement officials, a new basic training course for prison staff and a further-training course for management have been prepared and are being given by the Swiss Centre for the Training of Prison Staff. The course began in the autumn of 1995 and involve in-service training, the introductory part of which is provided directly by the canton concerned, and theoretical training for 15 weeks which emphasizes educational psychology and deals in depth with the specific problems of the enforcement of sentences. This training is designed to provide better understanding of detainees, better conflict management and a clearer idea of security problems.

Switzerland's international activities

98. In this context, attention is drawn to Switzerland's activities in the Council of Europe concerning the role of the police in protecting human rights, particularly during the formulation of the programme on "Police and Human Rights 1997-2000".

99. Switzerland's determination to combat torture and its effects is also evident in the support given by the federal and cantonal authorities to a therapy centre in which the Swiss Red Cross treats victims of torture. This centre, located in a Bernese hospital, has been in existence since the autumn of 1995. At the international level, Switzerland recalls that it sets great store by the prompt adoption of an optional protocol to the Convention against Torture, intended to establish a preventive system of visits to places of detention, a project that was originally based out of a private Swiss initiative.

Draft reform of the Federal Constitution

100. Article 9, paragraph 2, of the draft reform of the Federal Constitution expressly prohibits torture and any other type of cruel, inhuman or degrading treatment or punishment. Article 21 of the draft reform on protection against refoulement provides that in no event may a person be returned to a State where he is liable to be subjected to torture or any other cruel and inhuman treatment or punishment (see para. 133 below).

Article 8

Prohibition of slavery and forced labour

Community work as a penalty

101. Under article 3(a) of Order No.3 on the Penal Code, the Federal Department of Justice and Police (DFJP) may allow a canton to enforce custodial sentences of three months or more in the form of community work with the consent of the person sentenced. In its draft revision of the general part of the Penal Code, the Government proposes the introduction of community work as a principal separate disciplinary measure (draft art.37) which the court may order only with the consent of the person sentenced.

Exploitation of women

102. The problem of the traffic in women for the purpose of prostitution is a matter of concern to the Swiss authorities. Since the initial report was submitted, the federal authorities have issued new guidelines to restrict the immigration of cabaret dancers and to give them better protection. As before, these guidelines apply to artistes who perform in cabaret, stage shows and whose time in Switzerland is limited to a maximum of eight months per calendar year (short stay). They supplement earlier guidelines on matters of procedure and introduce the following innovations:

Restriction of the maximum number of dancers;

Limited validity of visas;

Checks on the validity of the application;

Conditions for employment;

Regular monitoring of compliance with requirements for lawful employment and the protection of employees.

103. A new employment contract has been drawn up with the Swiss Association of Concert Cafés, Cabarets, Dancehalls and Discothèques (ASCO) (see initial report, para.110); it entered into force on 1 March 1998 and replaces the 1993 contract. It is intended to provide better protection for cabaret artistes and, in this respect, includes improvements in social security, the most important of which is the introduction of a daily allowance in the event of illness. The probation period has been done away with; the cabaret owner is bound for the full term of the employment contract and cannot dismiss a dancer without justification. For the first time, the standard contract prohibits the employer from requiring the dancer to incite customers to consume alcohol.

104. It may be mentioned that the Federal Immigration Bureau and the Federal Office of Equality between Men and Women have prepared general information sheets which Swiss consulates are asked to distribute to cabaret dancers along with their visa or assurance of a residence permit. These sheets have been translated into the languages of the main countries of origin and inform these persons of their rights and obligations and the services to which they may apply in case of need. It may be noted that most cantonal authorities

also give the persons in question, a detailed information sheet together with their residence permit, indicating the cantonal regulations in force and the public services and specialized associations available to them.

Sexual abuse of children

105. With regard to "sex tourism", paragraph 113 of the initial report stated that Parliament had given the Federal Council the task of studying an amendment to the Penal Code to make it possible to institute criminal proceedings against persons residing in Switzerland who have committed sexual acts with children or have been involved in the traffic in children, even if the offences are not punishable in the countries in which they were committed. When the initial report was submitted, it was stated that the Swiss Government was giving serious consideration to the possibility of waiving the non bis in idem rule in the case of the sexual abuse of children. The draft revision of the general part of the Penal Code contains a new article 5 which provides a legal basis for the prosecution in Switzerland, independently of foreign law, of persons who commit serious sexual offences against minors abroad. In the case of such acts, the draft would waive two requirements: the non bis idem rule and taking account of the more favourable law applicable in the place where the offence was committed. The offender would be prosecuted regardless of his nationality, provided that his domicile or habitual residence was in Switzerland.

106. It is, however, in connection with the taking of evidence that the main obstacles to the prosecution of offences committed abroad arise; this is particularly so when offences are not punishable in the countries in which they were committed, since the State in question then feels no obligation to provide mutual legal assistance. In order to ensure that the waive of the non bis in idem principle in the new article 5 contained in, the above-mentioned draft revision is not merely symbolic, the draft will also propose an amendment to the Federal Act on International Assistance in Criminal Matters so that the Swiss authorities will no longer be prevented from requiring legal assistance from another State involving coercive measures in connection with the prosecution of a sexual offence against a child, even if the offence is not punishable in the State to which application has been made.

107. At the international level, Switzerland is a member of a United Nations Commission on Human Rights Working Group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

Community service

108. The question of conscientious objection and community service, as referred to in article 8, paragraph 3(c), of the Covenant, is discussed in detail in the chapter relating to article 18 of the Covenant (paras. 161-163).

Article 9

Right to liberty and security

Case law of the Federal Tribunal

109. Although, according to the Federal Constitution, criminal procedural law comes within the jurisdiction of the cantons, the case law of the bodies set up under the European Convention on Human Rights (ECHR) and of the Federal Tribunal have had a considerable influence on existing codes of procedure, which are thus in agreement on many points.

110. This is particularly relevant to the right to liberty and security of person within the meaning of article 9 of the Covenant and article 5 of the European Convention on Human Rights, in which case law has played a very important role (see in this regard the list of decisions published in the Official Compendium of Federal Tribunal Decisions (ATF), 1985-1994 (ATF 111-120), pp.852 et seq.; 1995-1996 (ATF 121-122), pp.252 et seq.). The safeguards deriving from these two provisions overlap to a considerable extent but are nevertheless not identical. In this connection, attention is drawn to a more recent decision, dated 27 June 1997,in which the Federal Tribunal found that there was a difference between article 9, paragraph 5, of the Covenant, and article 5, paragraph 5, of the European Convention on Human Rights in that the safeguard contained in the Covenant is more broadly drafted because it also provides for the right to compensation, regardless of a finding of the breach of article 9, paragraphs 1 to 4, of the Covenant, solely on the grounds that internal law (more favourable) was violated (this was not true in the case in question).

Second periodic visit to Switzerland of the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT

111. Following its visit to Switzerland from 11 to 23 February 1996, the CPT drew attention, in its report to the Federal Council, to some shortcomings in areas which are also within the scope of the Covenant. For example, it pointed out that the right immediately to informa a relative or a third party, the right of access to a lawyer as soon as a person is taken into police custody and the right of access to a doctor of the detainee's choice had changed very little since 1991. These rights are also one of the Committee's subjects of concern (para. 13 of the concluding observations). Comments on these safeguards against the ill-treatment of detainees are to be found in part III of the present report (subject of concern VI, para. 275-278).

Asylum procedure in airports

112. With regard to article 9, paragraph 3, of the Covenant, it should be noted that the Federal Council has amended the Order on Asylum and the Order on the Swiss Asylum Appeals Commission (CRA). These amendments, which relate to provisions applicable to asylum procedure in airports, are a necessary consequence of the new principles stated by the Federal Tribunal in its decision of 27 May 1997 (ATF 123 II 193). From the viewpoint of restriction of freedom, the Federal Tribunal requires court supervision in cases where the conduct of the asylum procedure means that the asylum-seekers will have to spend some considerable time in the airport.

113. The new regulations provide for the following procedure: any person who applies for asylum in an airport and who is not immediately granted an entry permit by the Federal Office for Refugees because of doubts about the grounds for asylum he has invoked is subjected to a restricted residence order applicable in the airport transit zone for the duration of the procedure. The time spent in the airport should not, however, exceed 15 days. This period is sufficient for obtaining the necessary clarifications. The asylum-seeker may lodge an appeal with the Appeals Commission (CRA) against the decision to prohibit his entry or the decision to subject him to restricted residence in the airport transit zone. Within the Appeals Commission, a single judge rules on such appeals.

114. Similar regulations are the subject of discussion in the context of a full revision of the Asylum Act. The National Council has adopted the relevant provisions by a large majority; they also provide for a maximum period of 15 days in the airport. The competent commission in the Council of States has also adopted these regulations.

Constitutional reform

115. According to the draft reform of the Constitution, the unwritten constitutional right to liberty of person, especially physical and mental integrity, will be expressly guaranteed in article 9, paragraph 2. Draft article 27 contains rules on deprivation of liberty.

> "Article.27 Deprivation of liberty
>
> 1. No one may be deprived of his liberty except in the cases provided for, and in the manner prescribed, by law.
>
> 2. Any person deprived of his liberty has the right to be informed immediately, in a language he understands, of the reasons for such deprivation and of his rights. He shall be entitled to assert his rights; in particular, he has the right to have his close relatives informed.
>
> 3. Any person placed in pre-trial detention has the right to be brought before a judge immediately. The judge shall rule whether he is to be kept in detention or released. Any person in pre-trial detention has the right to be judged within a reasonable period.
>
> 4. Any person who is deprived of his liberty without a court order has the right so to inform the court at any time. The court shall rule as rapidly as possible rule on the lawfulness of such deprivation."

Ongoing revisions of federal laws

116. A Commission of Experts has drawn up a blueprint for the unification of criminal procedure (see part I of the present report, para.10), whereby the cantons will no longer have jurisdiction in matters of criminal procedure. On 23 February 1998, the Commission published its report, which contains the possible features of a future code of criminal procedure applicable throughout Switzerland (see the chapter on art. 14 of the Covenant, para.136).

117. Another draft revision relates to deprivation of liberty for purposes of assistance, which is covered by the Swiss Civil Code. A preliminary draft will be submitted to the Commission of Experts by the end of the year.

Article 10

Humane treatment of persons deprived of liberty

Case law of the Federal Tribunal

118. The Federal Tribunal clarified certain principles relating to respect for personal liberty in a prison context during the consideration of the constitutionality of the prisons ordinance of the canton of Basel-Town of 19 December 1995 (ATF 123 I 221 et seq.). Referring expressly and exclusively to article 10 of the Covenant, the Federal Tribunal recalled that it may be contrary to human dignity to put a prisoner in solitary confinement (preambular para.II/1, p.233). In the same decision, the Federal Tribunal expressly recognized the right of prisoners to medical care (preambular para.II/2, p.235). It stated that regulations forcing not only convicted prisoners, but also other categories of prisoners, in particular, foreigners who have been deprived of their liberty prior to deportation, to perform the work assigned to them by the authorities is contrary, inter alia, to liberty of person and article 14, paragraph 2, of the Covenant (preambular para.II/3, pp.236 et seq.).

119. In another decision relating to the canton of Zurich, the Federal Tribunal deals with the minimum federal law requirements relating to the execution of administrative detention (ATF 122 I 222, preambular para.2, p.225). It takes account of article 10 of the Covenant and of the Standard Minimum Rules for the Treatment of Prisoners adopted by the Economic and Social Council on 31 July 1957 and 13 May 1977 and by the Council of Europe. According to the Federal Tribunal, persons awaiting deportation should not be placed together with persons in pre-trial detention or serving a sentence. In any event, the premises and system of detention for these two categories of detainees must be kept strictly separate. This separation must clearly show that the detention of persons who are to be deported has been ordered not because they allegedly committed a crime or an offence, but in a strictly administrative context. In the above-mentioned decision concerning the canton of Basel-Town (ATF 123 I 221), the Federal Tribunal specified the conditions in which it may be permissible to place a person detained as an administrative measure by the Aliens' registration Office in a facility for the execution of sentences or pre-trial detention (preambular para. II/1, pp.229 et seq.). Lastly, as mentioned in the Swiss Government's additional written replies of 4 November 1996 (Sect.1.2.3.), detention prior to refoulement must take place in suitable premises. In accordance with the case law of the Federal Tribunal, it is essential that, from the start of the period of detention, conditions should allow for a daily walk in the open air. After one month's detention, not less than one hour per day in the open air must be guaranteed, whatever the layout of the premises. In a recent decision on conditions of detention of inmates awaiting refoulement in Solothurn Prison, the Federal Tribunal notes that because foreign detainees are locked up for 23 hours a day in three-person cells, they do not have enough contact with each other. They should have access to a day-room or at least the possibility of group activities in addition to the compulsory one-hour walk (decision of 8 May 1998 (2A.152/1998)).

120. With regard to the obligation to undergo a psychiatric evaluation, the Federal Tribunal handed down a decision in 1998 on conditions in which it is excessive to have the police take a very elderly and fragile person requiring medical care by force to a psychiatric hospital for an evaluation ATF 124 I 40).

Conditions of detention

121. The periods of leave granted to prisoners (see para. 162 of the initial report), which are their most important form of contact with the outside world, have in recent years been regarded with some concern by the population following serious offences committed during such periods of leave, especially by prisoners convicted of sexual crimes. Offences of this kind have led a number of cantons to tighten up their practice in respect of conditional release and the granting of leave.

122. Some cantons have begun to draw up programmes in order to keep track of sexual offenders well after their final release. In the canton of Vaud, for example, an interdisciplinary advisory commission on offenders requiring psychiatric care was established on 15 June 1994. Its task is to assist the authorities and therapists not only with proposals for treatment and changes in, ongoing treatment, but also with decisions to make the regime less strict (periods of leave, internment in a more open institution or under a more open regime) and follow-up in the context of conditional release or release on probation. German-speaking Switzerland has also established commissions of this type. In this context, mention may also be made of a programme of treatment for sexual and violent offenders introduced in Pöschwies Prison.

123. As to the problems of drug-addicted prisoners (see para. 167 of the initial report), pilot projects are being carried out in some prisons to provide sterile injection equipment for the prevention of AIDS and other infectious or viral diseases. Results have shown that this practicehelps to improve the general level of health in the establishment without causing any particular problems from other points of view (security, for example). The good results of a plan to distribute sterile injection equipment in Hindelbank women's prison have encouraged the canton of Berne to distribute such equipment in all Bernese establishments where sentences are served. Attention is also drawn to the pilot project for the medical prescription of heroin for some prisoners in Oberschöngrün penitentiary in Solothurn. Generally speaking, the persons in charge of prison facilities have observed a drop in drug use in prison.

124. During its second periodic visit to Switzerland, the European Committee for the Prevention of Torture criticized the conditions in which prisoners were transported by train. The Federal Railways have issued guidelines to their personnel with a view to improving transport operations and other measures are being drawn up.

125. With regard to the European Committee's other concerns about allegations of ill-treatment during arrests or in police custody, particularly in respect of foreign nationals (para. 13 of the concluding observations) and the problem of pre-trial detention in police cells in some instances (para. 14 of the concluding observations), reference should be made to part III of the present report (subjects of concern VI and VII).

Draft revision of the general part of the Swiss Penal Code and the draft Federal Act on the Criminal Status of Minors

126. Mention was made in paragraph 185 of the initial report of the revision of the general part of the Penal Code and of the preliminary draft of a Federal Act on the Criminal Status of Minors. These drafts have been reworded in the light of the results of the consultation procedure and have now become bills which will in the near future be submitted by the Government to the Parliament together with a message.

127. At the time of its accession to the Covenant, Switzerland formulated a reservation in respect of article 10, paragraph 2(b), according to which the separation of accused juvenile persons from adults was not unconditionally guaranteed, since the cantonal Codes of Criminal Procedure did not all provide for their separation (see paras. 182 et seq. of the initial report). The bill on the criminal status of minors stipulates that minors must obligatorily be separated from adult prisoners both during pre-trial detention (draft art.6, para.2) and during imprisonment as a measure (draft art.14, para. 1) and as a penalty (draft art.26, para.2). The withdrawal of the reservation may thus be possible in the near future.

Article 11

Prohibition of imprisonment for indebtedness

128. Article 42 of the Federal Act of 12 June 1959 on the Military Service Exemption Tax, which provided for up to 10 days' imprisonment for persons failing to pay the tax in question (see the initial report, para. 186), was repealed on 1 January 1995.

Article 12

Right to liberty of movement and freedom to choose one's residence

129. Reference may be made to paragraphs 187 to 214 of the initial report. While the principle of liberty of movement throughout the territory raises no serious problems, the principle of freedom of permanent residence is not compatible with article 8 of the Federal Act on the Temporary and Permanent Residence of Foreigners (LSEE), whereby the permits issued by the Aliens' Registration Office are valid only for the issuing canton. A reservation in this regard was and still is essential (see the initial report, paras. 206 and 207).

130. Under article 13e of the above Act, the competent cantonal authority may require a foreigner who does not hold a temporary residence permit (autorisation de séjour) or a permanent residence permit (autorisation d'établissement) and who disturbs or threatens security and public order not to leave an assigned area or not to enter a specific region. A national of Kosovo, whose application for asylum had been rejected and who had been prohibited by the cantonal police of the canton of Graubünden from leaving the territory of the canton after he had violated an entry prohibition, brought an administrative-law action before the Federal Tribunal. The Tribunal noted in an unpublished decision of

13 July 1995 (2A, 193/1995), quoting the Views of the Committee of 18 July 1994 (communication No.456/1991, Ismet Celepli v. Sweden; RUDH 1994, 395), that article 12 of the Covenant was not applicable, since an expulsion order had been issued against the applicant, indicating that his stay in the country was not lawful.

131. The draft constitutional reform expressly guarantees freedom of permanent residence in article 20, paragraph 1, but restricts it to Swiss citizens. However, a foreigner holding a permanent resident permit may theoretically, subject to the exceptions listed in article 9, paragraph 3, of the LSEE, freely take up permanent residence in another canton, if the State of which he is a national has concluded a permanent residence treaty with Switzerland. This right of permanent residence, which differs very little from that to which Swiss nationals are entitled, is not a constitutional right, but may be regarded as one whose respect may be required under the international obligations assumed by Switzerland.

Article 13

Expulsion of foreigners

132. The information provided by Switzerland in its initial report is still relevant (paras. 215-228).

133. Article 21 of the draft reform of the Federal Constitution stipulates that:

> "1. Swiss citizens may not be expelled from the country; they may not be handed over to a foreign authority without their consent.
>
> 2. Refugees may not be deported to the territory of a State or handed over to the authority of a State in which they are persecuted.
>
> 3. No one may be deported to the territory of a State in which he liable to be subjected to torture or any other form of cruel or inhuman treatment or punishment."

Article 14

Guarantee of the right to a fair trial

Constitutional reform

134. The following provisions of the draft amendments to the Federal Constitution as adopted by the two Councils reflect the Federal Tribunal's case law on procedural guarantees:

> "Article. 25 General procedural guarantees
>
> 1. Anyone who is subject to judicial or administrative proceedings shall be entitled to a fair hearing within a reasonable period of time.
>
> 2. The parties shall have the right to be heard.

3. Unless his case appears completely unlikely to succeed, anyone who lacks sufficient resources is entitled to free legal assistance. He shall also be entitled to the free assistance of a defence counsel, as required for the protection of his rights.

Article. 26 Guarantees of due process

1. Anyone who is to be the subject of judicial proceedings has the right to have his case tried by a competent, independent and impartial tribunal established by law. Emergency courts are prohibited.

2. Anyone who is the subject of a civil complaint is entitled to have his case brought before the judge of his place of domicile. The law may provide for a different tribunal.

3. The hearing and pronouncement of the judgement shall be public. The law may provide for exceptions.

Article. 28 Criminal procedure

1. Everyone shall be presumed innocent until his conviction has become final.

2. Every accused person has the right to be informed promptly and in detail of the charges against him. An accused shall be enabled to claim his defence rights.

3. Every convicted person shall have the right to his conviction being reviewed by a higher tribunal, with the exception of cases in which the Federal Tribunal rules in first and last instance."

Federal legislation

(a) "From 29 to unity"

135. This is the title of a blueprint federal code of criminal procedure, prepared by a commission of experts and submitted by the Federal Department of Justice and Police in December 1997. The concept paper outlines the basic features of a future code of criminal procedure applicable throughout Switzerland, sets out the consequences which the adoption of such a code would entail for the judicial organization of the cantons and comments on the fundamental legal questions which require an urgent response. The report was the subject of intensive discussion with the concerned parties throughout 1998, in hearings and study sessions. Tentative agreement already appears to have been reached on the general approach proposed. The Federal Council gave the go-ahead for the preparation of a bill for possible submission to the consultation procedure by 2000.

(b) Draft amendments to the Swiss penal code, the Federal Act concerning criminal Procedure and the Federal Act concerning Administrative Penal Law

136. The draft is made up of several parts, all having the same goal: to improve and increase the efficiency of prosecutions at the federal level. These measures have been developed mainly in response to the emergence of new forms of

criminality, in particular, organized crime, money laundering and certain types of economic crime. To improve prosecution in these areas, the Confederation should be vested with additional powers. In cases involving organized crime, for example, the Federal Public Prosecutor's Office should be able to institute investigation proceedings in lieu of the cantons. As investigation proceedings have taken on increased importance at the federal level, the rights of the accused and his counsel at this stage of the proceedings which are heavily restricted need to be strengthened. Specifically, the improvements basically aim at establishing rules governing arrest and the participation of the accused and his counsel in the taking of evidence (Feuille fédérale 1998 II, pp. 1253 et seq.).

(c) Introduction of a federal act on mail and telecommunications surveillance and a federal act on secret inquiries

137. Apart from the work in progress, at the parliament at any level to unify criminal procedure in Switzerland, the Federal Council, in its 1 July 1998 message to the parliament concerning the federal acts on mail and telecommunications surveillance and on secret inquiries, proposed the adoption of common rules governing both of these sensitive areas. The legislative revisions in question are based on the case law of the European Court of Human Rights relating to the requirement of a legal basis for surveillance measures and to the right to a fair trial.

138. Mail and telecommunications surveillance has until now been ordered by the judicial authorities conducting the inquiry and must be authorized by a single canton-wide authority or, when it lies within the competence of the Confederation, by the President of the Indictments Division of the Federal Tribunal or by the President of the Military Court of Cassation. The conditions laid down in the draft amendments are stricter than those currently in force (see draft, art. 3). Surveillance may be ordered for the prosecution and prevention of crimes and for a limited number of offences set out in an exhaustive list.

139. The authority empowered to authorize the surveillance will have to verify not only the legality, but also the proportionality, of the infringement. When the surveillance involves third parties, in particular persons bound by professional confidentiality, the authority will ensure that it is subject to adequate measures of protection.

140. According to draft article 8, surveillance is lifted by the authority which ordered it as soon as it ceases to be necessary for the conduct of the inquiry or when authorization or extension of authorization has been refused. When the file is opened for consultation or when the procedure is suspended, at the latest, the authority which has ordered the surveillance will inform the individual concerned of the grounds for the surveillance and the duration and method used. The individual concerned then has 30 days to apply for a remedy, on the grounds that the surveillance was unlawful and disproportionate.

141. According to the draft federal act on secret inquiries, action by undercover agents is a police measure available to the criminal investigation authorities in complex procedures. The draft amendments will make the act applicable to secret inquiries conducted to combat drug trafficking and, in the framework of federal criminal procedure, to clarify crimes which are subject to

federal jurisdiction and whose seriousness justifies secret inquiries. (draft art. 1). Secret inquiries are thus used in particular to clarify bilateral illegal transactions, in which undercover agents approach criminals posing as potential customers. This type of assignment is usually entrusted only to specially trained police officers.

142. The draft amendments make a distinction between the first phase, including assignment and preparations, and the second phase, of involvement in a particular criminal procedure. On approval by the judge, undercover agents may take on another identity. They are given appropriate protection if they have to appear as witnesses against the accused during the proceedings. Undercover agents must operate only in connection with the actual commission of an act which the person concerned has already decided to commit; they do not have the right to incite the person to commit other punishable acts or a more serious offence than the one initially planned.

(d) Introduction of a federal act on the freedom of movement of lawyers

143. There are two aspects to this bill: on the one hand, it provides for freedom of movement for lawyers by introducing cantonal lawyers' registers and, on the other, it standardizes certain conditions for practising the legal profession as regards professional rules, disciplinary monitoring and fees. The draft act was very well received during the consultation procedure. The Federal Council therefore requested the Federal Department of Justice and Police to prepare a message and a bill for submission to the Parliament.

Case law of the Federal Tribunal

144. The Federal Tribunal has handed down several decisions in which it examined the compatibility of measures taken by an authority with the guarantees provided for by article 14 of the Covenant and article 6 of the European Convention on Human Rights (see in this connection the list of decisions published in the Official Compendium of Swiss Federal Tribunal Decisions, 1985-1994 (ATF 111-120), pp. 855 et seq.; 1995-1996 (ATF 121-122), pp. 253 et seq. and 260). The Federal Tribunal has handed down 12 unpublished decisions on article 14 of the Covenant. It found a violation of article 14 in two cases, the first on the right of the accused to communicate with his counsel freely and without supervision (Covenant, article 14, para.3 (b); decision of 11 September 1996 (1P.452/1996) and the second on the presumption of innocence (art. 14, para. 3(g); decision of 24 June 1997 (1P.166/1997)).

145. It should be noted that federal judges may apply the Covenant directly, at the same level and in the same context as article 4 of the Constitution and article 6 of the European Convention. Commentaries on the ideas these articles embody are made jointly for the three instruments, thus showing that their content is identical (see for example, ATF 122 I 257 and 121 I 196).

146. In a decision concerning the canton of Vaud, for example (ATF 122 I 109), the Federal Tribunal found a concurrent violation of article 14, paragraphs 1 and 3 (b), in relation to article 2, paragraph 1, and article 26 of the Covenant and a violation of article 4 of the Constitution and article 6 of the European Convention in relation to article 14 of the European Convention. In criminal proceedings which took place in the canton of Vaud, the Vaud authorities had refused to transmit the file to counsel on the ground that counsel was located

in the canton of Neuchâtel. The Federal Tribunal ruled that transmitting the file to a lawyer located in the canton of Vaud, but not transmitting it to a lawyer located in another canton was discriminatory.

147. The Federal Tribunal has handed down several decisions concerning extradition and judicial cooperation, in which it determined that, when Switzerland grants either, it must ensure that "the procedures in respect of which it offers its cooperation guarantee persons subject to prosecution a minimum standard equivalent to that provided by the legislation of democratic States, especially as defined in the European Convention and the Covenant" (EIMP, art. 2 (a)) (see chapter on article 7 of the Covenant, para. 95).

Reservations

148. Concerning Switzerland's reservations to article 14, paragraph 1 (public hearing and public pronouncement of the judgement; scope of judicial control in disputes relating to civil rights and obligations) and to article 14, paragraph 3 (d) and (f) (free assistance of an interpreter, court-assigned counsel), it should be noted that, in June 1998, the Federal Council approved a bill aimed at withdrawing Switzerland's reservations and interpetative declarations regarding article 6 of the European Convention (whose text corresponds to that of Switzerland's reservations and interpretative declarations regarding article 14, paragraphs 1 and 3 (d) and (f), of the Covenant). The bill takes account of the case law of the European Court of Human Rights and of the Federal Tribunal declaring certain of Switzerland's reservations to article 6 of the European Convention to be invalid (see initial report, paras. 248-252). It was submitted for consultation to the cantonal authorities and interested quarters by the Federal Council. The consultation procedure does not deal with the question of the withdrawal of Switzerland's reservations to article 14. The Federal Council is the only competent body as far as the withdrawal of reservations to the Covenant is concerned (whereas reservations to the European Convention require a decision of the Parliament). The Federal Council will nevertheless take account of the results of the consultation procedure and the parliamentary debate on the withdrawal of reservations and interpretative declarations regarding article 6 of the European Convention before beginning the procedure for the withdrawal of reservations to article 14 of the Covenant.

Article 15

Nulla poena sine lege

149. The information provided by Switzerland in the initial report (paras. 303-305) remains valid. It should be noted that article 336 of the preliminary draft of the amendments to the Penal Code, mentioned in paragraph 305 of the initial report, is now found in article 390, paragraph 2, of the draft amendments to the Code, in a different form, but with similar contents.

Article 16

Right to recognition of legal personality

150. The information provided by Switzerland in the initial report (paras. 306-309) is still valid.

Article 17

Right to respect for privacy and family life

Privacy

151. With regard to protection of the data referred to in paragraphs 317 to 327 of the initial report, it should be noted that, since the entry into force of the Federal Act concerning the Protection of Data (RS 235.1), the number of cantons with regulations for the protection of data has been steadily increasing. Seventeen cantons have enacted legislation on the protection of data. The other cantons are subject to the Federal Act concerning the Protection of Data when processing personal data under to federal law. In addition, several federal laws have been amended or are being reviewed to bring them into line with the requirements of the Federal Act concerning the Protection of Data.

152. At the international level, Switzerland ratified the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data on 2 October 1997. The Convention entered into force for Switzerland on 1 February 1998. By promoting the harmonization of national bodies of legislation, the Convention aims at providing a high level of protection of data while guaranteeing the free flow of data, regardless of borders.

153. The Federal Council also proposed that the Parliament should adopt common rules in the areas of mail and telecommunications surveillance and secret inquiries. As both areas may undoubtedly give rise to serious interference with personal freedom and privacy, the Federal Council is proposing the entractment of federal laws establishing detailed regulations governing them (for further details, see chapter on article 14 of the Covenant, paras. 137-142).

Family life

154. Different types of family structures are becoming increasingly accepted in Switzerland. The amendments to the Civil Code take this trend into account by making provision for the maintenance of joint parental authority on joint application by the father and mother, provided that this is consistent with the child's welfare (art. 133, para. 3 of the Swiss Civil Code). It also stipulates that unmarried parents living together may apply to the supervisory authority for joint parental authority under the same conditions as divorced parents (art. 298(a), para.1 of the Swiss Civil Code).

155. As stated in paragraph 337 of the initial report, there is no general definition of "family" in Swiss law. With regard to immigration and family reunification, the Federal Tribunal stipulates that, for applications under article 8 of the European Convention, a family relationship must exist between the foreigner and a person having the right to reside in Switzerland (permanent residence permit or Swiss nationality) or a definite right to the granting or extension of a temporary residence permit. The family relationship involved must also be close and meaningful (see ATF 122 II 1; 120 Ib 1; 119 Ib 91; 116 Ib 353). The European Court of Human Rights has had occasion to substantiate the foregoing, ruling that Switzerland was not violating article 8 of the European

Convention in refusing to grant family reunification to a child whose parents held only an annual residence permit in Switzerland (Decision in the case of Gül v.Switzerland, 19 February 1996, vol. 1996-I, No. 3).

156. The Federal Tribunal considers the family relationships which give rise to the granting of a temporary residence permit to be, first and foremost, the spousal relationship and the relationship of parents and minor children living together. If the person requiring the temporary residence permit is not part of such a unit, the family relationship can be protected only if the applicant is a dependant of the person entitled to reside in Switzerland (ATF 120 Ib 257). The scope of protection provided by article 8 of the European Convention would be widened excessively if descendants who were of age and capable of earning an independent living were able to derive from this treaty provision the right to live together with their parents and obtain a temporary residence permit on that basis (ATF 120 Ib 257).

157. The case law of the Federal Tribunal also indicates that half-brothers and half-sisters may, under certain conditions, apply for family reunification in Switzerland on the basis of article 8 of the European Convention. One such example occurs when an adult entitled to reside in Switzerland has responsibility for a half-sister or half-brother who is dependent on him or her (ATF 120 Ib 261).

158. Article 8 of the European Convention also applies in the case of a foreigner claiming an intact relationship with a child enjoying the right to reside in Switzerland, even if the child is not subject to his parental authority or custody under family law (ATF 115 Ib 97). Ongoing contact between parent and child, for example, through visiting rights, may be sufficient (ATF 120 Ib 1).

159. Mention should also be made of Federal Tribunal practice (ATF 120 Ib 6) under article 7 of the LSEE, which gives the foreign spouse of a Swiss national the right to the granting and extension of a temporary residence permit. The Federal Tribunal has determined that a conviction giving rise to a two-year prison sentence is a ground for expulsion and also entails loss of the right to extension of the temporary residence permit (see initial report, para. 335), even if the foreigner is subject to the provisions of article 8 of the European Convention. A two year sentence is are an indicative limit and longer sentences are considered seriously to endanger public safety and the legal order, as set forth in article 8, paragraph 2, of the European Convention.

160. The draft reform constitutional (art. 11) explicitly guarantees everyone the right to respect for privacy and family life, domicile and correspondence and relations established by mail or telecommunications. The right of everyone to be protected against misuse of personal data is guaranteed by article 11, paragraph 2.

Article 18

Freedom of thought, conscience and religion

Civilian service

161. In its concluding observations (para. 10), the Committee welcomed the entry into force of the Civilian Service Act (LSC) of 6 October 1995 (RS 824.0), referred to in paragraph 353 of the initial report. The possibility of performing unarmed military service was maintained for the same reasons as those entitling a person to perform civilian service, namely, an inability to reconcile military service or armed service with his conscience. Civilian service is not an alternative to military service in the sense that it cannot be freely chosen. A person subject to military service who wishes to perform civilian service must show that he cannot reconcile military service with his conscience. The law no longer makes a distinction between the different grounds for conscientious objection. A conscientious objector is no longer brought before the military courts and no longer receives a conviction, but is the subject of an administrative decision.

162. Between the beginning of October 1996, when the Civilian Service Act entered into force, and the end of June 1998, a total of 3,198 applications for admission to civilian service were filed, 1,987 of which received a decision in first instance. Of those applications, 1,540 were accepted, 256 were rejected, 108 received no decision because they did not meet the requirements for submission and 83 were withdrawn. In other words, 77.5 per cent of applications which received a decision were accepted and 22.5 per cent were not.

163. As things stand, anyone who has reasons of concience for refusing to perform military service generally files an application for admission to civilian service within the prescribed period to avoid being considered as refusing to serve. Accordingly, the number of military judicial proceeding and resulting convictions for refusal to serve has been decreasing substantially since 1996. Convictions numbered 259 in 1995 (177 of which involved fundamental ethical values), but only 96 in 1996 (48 of which involved fundamental ethical values) and further decreased to 42 in 1997 (2 of which involved fundamental ethnical values). There was also a decrease in the number of applications for unarmed military service.

Religious and moral education

164. A recent Federal Tribunal decision (ATF 123 I 296) prohibited a Muslim primary school teacher in the canton of Geneva from wearing a scarf which she said was required by the Koran. On the basis of article 49 of the Federal Constitution, article 9 of the European Convention and article 18 of the Covenant, the Federal Tribunal ruled that the style of dress adopted by the petitioner for religious reasons was protected, by freedom of conscience and belief but not absolutely. However, the Federal Tribunal found that, in the case in question the prohibition against the petitioner had a sufficient legal basis, and was in keeping with an overriding public interest (neutrality and peace in the schools concerning religious matters, in particular) and with the principle of proportionality.

165. Another case, which is currently before the Administrative Tribunal of the canton of Neuchâtel, relates to a school board's decision prohibiting a girl from wearing an Islamic scarf at a public primary school. The cantonal

department of public education and cultural affairs accepted the father's petition on the basis of the position defined by the Conference of Directors of Public Education of the cantons of French-speaking Switzerland and Ticino in 1996, which authorized pupil's to wear traditional religious objects (such as crosses, yarmulkes and scarves).

166. On 20 March 1998, The Federal Parliament also adopted an amendment to the Federal Act on Work in Industry, Crafts and Commerce (RS 822.11). A successful referendum against this Act on 9 July 1998 should postpone until later 1999 at the earliest the entry into force of the provision extending to followers of religions other than Catholic and Reformed, in particular the Jewish and Muslim religions, coverage under article 18 of the Act, which authorizes workers to interrupt their work for religious holidays other than those treated as official holidays by the cantons.

167. On 1 September 1997, the "Jewish Communities Act" entered into force in the canton of Berne, granting a Jewish community for the first time in Switzerland, public law status, to which only the Catholic and Reformed religions had previously been entitled. Public law status is broader than the official recognition granted by a few other cantons, the cantons having the main authority in matters of worship. In fact, includes payment of rabbis' salaries by the canton, in accordance with the "Order relating to the Remuneration of Rabbis", which entered into force on the same day.

Article 19
Freedom of opinion and expression

168. The initial report (para. 369) refers to the Decree of 24 February 1948 concerning political speeches by foreigners (RS 126), pursuant to which foreigners who do not have a permanent residence permit may speak on a political subject, at public or private meetings, only with special authorization. The Committee stated that the Decree should be repealed or amended to bring it into conformity with the guarantee of freedom of expression. The Decree was repealed on 9 March 1998 with effect from 30 April 1998.

169. On 15 June 1998, the Federal Council also repealed the Decree of 29 December 1948 relating to Subversive Propaganda (RS 127). This provision, which falls within the purview of the doctrine of necessity, was enacted as protection against the threat of communism. In recent years, it was used essentially to confiscate, when appropriate, the writings, phonograms and emblems of foreign organizations advocating civil war or violence, which, if published, would have come within the scope of criminal legislation against racism.

170. Paragraph 364 of the initial report indicates that the records of the administration are accessible to all only under certain conditions. The Swiss Government's additional written replies to the questions raised by the Committee when it considered the initial report (ch.5, p.8) state that it would be excessive to establish as a principle the right of unconditional access to information held by the public authorities and to make such restrictions into a system of exemptions governed by strict legal rules. The concept of the transparency of the administration must take two categories of limits into

account: the fundamental rights of third parties and the smooth functioning of the executive branch of government, which is also an essential component of a democratic State.

171. In December 1997, the Federal Council accepted a parliamentary motion to introduce the principle of transparency. It nevertheless considers that this principle should be applied with care. No time-limit has been set for the submission of the bill, which should be prepared in close cooperation with the Federal Chancellery and the other departments. The transparency system would guarantee the principle of public scrutiny of the administration's business and documents. Its implementing act would specify the areas and categories in which exceptions are allowed.

172. Several cantons have introduced this principle into their legislation in one form or another (Berne, Appenzell Outer-Rhoden, Schaffhausen, Solothurn and Zug).

173. It should also be mentioned that the draft constitutional reform expressly provides for freedom of opinion and information, scientific and artistic freedom and freedom of the media.

Article 20

Prohibition of propaganda for war

174. The Committee noted in its concluding observations (para.5)that, on 28 September 1995, Switzerland withdrew its reservation to article 20, paragraph 2, of the Covenant on introducing new provisions into its criminal legislation establishing penalties for incitement to racial discrimination.

Article 21

Right of peaceful assembly

175. The possibility for foreigners' to vote in their diplomatic and consular representations since 1993 and to organize electoral campaigns in Switzerland during their national elections and together with their recently obtained right to make political speeches without prior authorization place them on practically the same footing as Swiss nationals where the right of assembly is concerned.

176. The right of peaceful assembly is expressly guaranteed in the draft constitutional reform and included as one of the fundamental rights.

Article 22

Freedom of association

Trade union freedom

177. As stated in paragraph 405 of the initial report, article 56 of the Constitution implicitly guarantees trade union freedom.

178. In its draft reform of the Constitution, the Federal Council proposes the introduction of a new article 24, paragraph 3, expressly guaranteeing trade union freedom, with its accompanying right to strike and right to impose lock-outs. The text proposed by the Federal Council guarantees the rights to strike and to impose lock-outs provided that they involve labour relations and are in keeping with the obligation to preserve a peaceful work atmosphere or resort to conciliation procedures (obligation set forth in most of the collective bargaining conventions covering Switzerland).

179. The National Council accepted the version proposed by the Federal Council, while the Council of States adopted the following text: "Strikes and lock-outs are lawful when they involve labour relations, are adapted to the circumstances and comply with the obligation to preserve a peaceful work atmosphere or resort to conciliation procedures".

Federal Worker Participation Act

180. As a follow-up to the initial report, mention should be made of the Federal Act on Informing and Consulting Employees in the Workplace of 17 December 1993 (Worker Participation Act), which entered into force on 1 May 1994 and is closely related to freedom of association as guaranteed by article 22 of the Covenant.

181. The Worker Participation Act vests the workers with participation rights, which may be exercised either by their elected representatives when the undertaking employs at least 50 workers (art.3) or by the workers themselves (art.4). The method for electing and organizing workers' representatives is set forth in articles 5 to 8 of the Act.

182. Workers' representatives have the right to detailed information on all business about which it is necessary for them to have knowledge in order to perform their work appropriately and the employer is under the obligation to provide them, at least once a year, with information on the consequences of the undertaking's business performance for employment and for the staff (art. 9).

183. Article 10 of the Act also provides workers' representatives with participation rights in the following areas:

Safety in the workplace and protection of health (in conformity with article 82 of the Accident Insurance Act and article 6 of the Labour Act);

Transfer of the undertaking (Swiss Code of Obligations, arts. 333 and 333(a));

Collective dismissals (Swiss Code of Obligations, arts. 335(d) to 335(g)).

184. In undertakings without worker representation, workers directly exercise their right to information and their participation rights as laid down in articles 9 and 10.

185. The Worker Participation Act also stipulates that employers must support workers' representatives, in particular by making premises and facilities available (art. 11, para. 2). Employers may not prevent workers'

representatives from fulfilling their mandate or discriminate against them - either during or after their term - for reasons related to the exercise of the mandate itself; this protection also applies to candidates for election as workers' representatives (art. 12).

186. As the Act is still quite recent, few are aware of it and it is infrequently applied. The Federal Office for Economic Development and Employment is preparing a blueprint for informing as many workers and employers as possible, of workers' rights under the Worker Participation Act.

Worker protection

187. Paragraph 409 of the initial report states, "Workers have no personal right to be engaged and therefore have no protection, before they are taken on, against acts of discrimination by an employer which could impair their trade union freedom". However, workers are not totally unprotected, before they are taken on, against certain types of discrimination for labour activities.

188. Worker protection was strengthened by the entry into force on 1 July 1993 of the Federal Act concerning the Protection of Data, together with several legislative amendments, including the introduction of new article 328(b) of the Swiss Code of Obligations. The new article stipulates that an employer may not process data concerning workers unless the data in question refers to worker's ability to perform his job or is necessary for the performance of the labour contract. Employers are therefore not entitled to ask questions about workers' opinions or trade union activities and workers are not required to give accurate replies to such questions.

189. The Federal Act concerning the Protection of Data governs the processing of data relating to natural and legal persons by private individuals and by federal agencies (art. 2, para. 1). Article 3 (c) (1) of the Act states that information on trade union activities is included among the sensitive information which is governed by a special legal regime. Pursuant to article 11, paragraph 3, of the Act, private individuals who regularly process sensitive data or personality profiles or who communicate personal data to third parties are required to announce their data records when the processing of the information is not subject to a legal obligation and when the persons concerned are unaware of it. Private individuals who violate the obligation to announce their records are liable to penalties (art. 34).

190. The communication by private individuals of sensitive data or personality profiles to third parties without justification is prohibitied (art. 12, para. 2(c)). Such information requires the greatest confidentiality: it should not, for example, be communicated without justifiable grounds, in particular without the consent of the person concerned. An employer handling data concerning the trade union activities or opinions of a person without the person's knowledge would thus be required to communicate the data to the federal official concerned with data protection. Before a record is entered in the register of data records, the federal official must make an appraisal to verify that the data was processed lawfully (Order relating to the Act, art. 29, para. 3).

191. A draft message relating to International Labour Organization Convention No. 98 concerning the Application of the Principles of the Right to Organize and

to Bargain Collectively is shortly to be submitted to the Federal Council by the Federal Department of Public Economy. The ratification of the Convention by Switzerland would strengthen workers' protection against discrimination for labour activities.

Article 23

Right to marry

192. As regards the conditions for a marriage to be valid, the new provisions on the celebration of marriage, adopted on 26 June 1998, include the following new elements compared with the right as described in the initial report (para. 420):

(para. 420(a)) The age of majority under civil law and of consent to marriage was lowered to 18 by an amendment to the Civil Code that entered into force on 1 January 1996 (art. 96 of the Civil Code). This age limit applies without exception to both men and women.

(para. 420(b), footnote 270) In the revised Civil Code, it was decided to abolish the absolute impediment for mentally ill persons to enter into marriage.

(para. 420(c)) The revised civil law provides that by any person deprived of legal capacity in the event of refusal by the legal representative to consent to his marriage may apply to the courts(art. 94, para. 2, of the Civil Code).

(para. 420(d)) Additional provisions concerning impediments to marriage: under the revised marriage law, impediments to marriage have been reduced to the bare essentials (arts. 95-96 of the Civil Code).

Thus, impediments to marriage arising from relationship by marriage have been abolished (with the specific exception of a partner's child). Conversely, in view of the equality status of adopted and natural children, the possibility of dispensing with the impediment to marriage between adoptive brothers and sisters has also been abolished. Lastly, it has been made considerably easier to dissolve a marriage if a partner goes missing (art. 33, para. 3, of the Civil Code): if a person has been declared missing, the partner can obtain the dissolution of the marriage simply by making a statement to that effect to the registrar (there is no longer any need to institue proceedings similar to divorce proceedings).

(para. 420(e)) The publication of the banns has been abolished in the revised civil law.

193. With regard to the spouse's family name and the cantonal citizenship (para. 427, footnote 276, of the initial report), legislation is currently being prepared with the aim of replacing the order on civil status and instituting full equality between men and women.

194. With regard to the dissolution of a marriage by divorce (paras. 429 et seq. of the initial report), the new divorce law was adopted on 26 June 1998.

195. With reference to the initial report, paragraph 432 (last sentence), the revised civil law provides that unmarried parents may request the courts to grant joint parental authority, under the same conditions as apply to divorced parents (art. 298(a), para.1 of the Civil Code). If unmarried couples separate, the child remains under the mother's authority, as it was during the union (art. 298 of the Civil Code).

196. The right to marry is dealt with in article 12 of the draft reform of the Federal Constitution while family allowances and maternity insurance are dealt with in article 107.

Article 24

Rights of the child

General

(a) Convention on the Rights of the Child

197. The Convention on the Rights of the Child was ratified by Switzerland on 24 February 1997 and entered into force on 26 March 1997 (Feuille fédérale 1994 v, pp. 1 et seq.). The ratification of the Convention added new principles to the Swiss legal system that must be taken into account in defining policy of child protection and preparing draft legislation or regulations. Some of the provisions of the Convention are clear and precise enough to be applied directly by the administrative authorities or the courts. The Federal Tribunal, for example, has directly applied article 12 of the Convention, which requires a child to be given the opportunity to be heard in any proceedings affecting him if he is capable of forming his own views (ATF 124 III 90). This case law is incorporated in the draft revised divorce law (draft art. 133, para. 2).

198. In order to speed up ratification of the Convention without waiting for the relevant Swiss legislation to be revised five reservations were entered relating to art. 5 on parental authority, art. 7 on nationality, art. 10, para. 1, on family reunification, art. 37 (c) on separation of children and adults deprived of their liberty and art. 40 on penal procedure). The Federal Council has expressed the wish to withdraw the reservation as soon as possible. At the parliamentary level, the withdrawal of two reservations - one relating to restrictions on family reunification and the other relating to the separation of children and adults in places of detention (see also the chapter on article 10 of the Covenant, para. 127), has been expressly requested.

(b) Constitutional reform

199. As part of its work on the reform of the Constitution, the National Council adopted article 11 (a), concerning the rights of children and young people, which provides that:

"1. Children and young people have the right to harmonious development and to the protection required by their status as minors.

"2. They shall exercise their rights themselves to the extent they are capable of doing so".

200. The Council of States has also supplemented article 9 (right to life and individual freedom) by adding a third paragraph, as follows:

"Children and adolescents have the right to special protection as regards their integrity and development".

201. Also in the context of constitutional reform, the National Council has adopted an explicit ban on child labour (draft art. 101, para. 1). This addition has not yet been considered by the Council of States. Furthermore, both Councils have adopted a provision (art. 57 in the Council of States version and art. 81 in the National Council version) to the effect that the Confederation and its cantons should, in the performance of their duties, take into account the particular needs of children and young people as regards protection and encouragement.

202. Mention should again be made of the Parliamentary debate on the inclusion in the chapter of the new Federal Constitution on fundamental rights, of the right to adequate, free primary education (art. 16 (a)), which is provided for article 27, paragraph 2, of the present Constitution.

Protection of children

203. On 1 January 1996, the age of majority under civil law was reduced from 20 to 18 (art. 14 of the Civil Code). This is the age required for the exercise of the right to vote and to be elected. The reduction of the age of majority under civil law enables responsible young people aged at least 18 fully to exercise their civil rights. They are able to enter freely into contracts. A consequence of lowering the age of majority is that the mother and father's absolute obligation to maintain their children ceases two years earlier (art. 277, para. 1, of the Civil Code). At the same time, the minimum age of marriage was set at 18 for both women and men (art. 96 of the Civil Code). In accordance with the principle of equality between men and women, the possibility of women marrying between the ages of 17 and 18 has been abolished (Feuille fédérale 1993 I, p. 1093).

204. The Federal Tribunal has confirmed its practice of not allowing joint parental authority after a divorce (ATF 123 III 445). According to the revised divorce law, however, the judge has the option to uphold joint parental authority to the extent that that is compatible with the child's best interests (art. 133, para. 3, of the Civil Code). The revised law also allows unmarried parents to request joint parental authority under the same conditions as divorced parents (art. 298 (a), para. 1, of the Civil Code).

205. Since the entry into force in 1992 of the revised criminal law provisions on sexual offences, there has been significant development with regard to the statute of limitations on offences against sexual integrity. By a decision of 21 March 1997, the Federal Chambers adopted a parliamentary initiative bringing the statute of limitations for sexual acts with children (art. 187 of the Penal Code) into line with the 10-year period ordinarily fixed for the statute limitations on offences. This change came into force on 1 September 1997.

206. At the same time, however, experience has shown that many victims of sexual abuse are not capable of filing a complaint until years after the abuse took place. Bearing in mind that children often repress sexual acts they have

been forced to perform or keep silent because of threats from the person involved, the current limitation period of 10 years seems too short in some cases. The Federal Council was therefore requested by the two Federal Chambers to prepare a draft statute of limitations enabling prosecution for acts of a sexual nature committed with children aged under 16 to be suspended until the victim has reached the age of 18. A bill to that effect will shortly be submitted in the parliament.

207. Another draft amendment to the Penal Code relates to the ban on possession of magazines or videos containing scenes of sexual acts involving children.

208. A federal bill on the status of minors under criminal law will shortly be submitted to the Parliament by the Federal Council. It aims to raise the age of majority under criminal law from 7 to 10. The legislation is based on the idea that minors' education and social integration should take precedence over punishment. Young people aged over 16 who commit serious offences can nevertheless be sentenced to a maximum of four years' deprivation of liberty.

209. The revised Labour Act was adopted by the Parliament at its spring 1998 session. Signatures are now being collected to put the revised Act to a referendum. The minimum age for admitting children and young people to employment remains 15. What has changed is the regulation - by Order - of some of the activities children may be required to perform. These are, on the one hand, work done by children aged over 13 (errands and light work) and, on the other hand, work done by children up to the age of 15 at cultural, artistic or sporting events or in advertising.

210. The new regulations are intended to fill a gap in the current Labour Act, the effect of which is to prohibit such work, although the cantonal authorities have hitherto turned a blind eye, since it was not very common. In recent years, however, there has been an increase in this type of work and its performance by children, particularly in advertising, where children and young people are in great demand. The risk of economic exploitation of children and young people can only increase as a result, endangering their health and affecting their schooling, and it is now therefore necessary to regulate these particular types of child labour. A general ban on such work was not considered appropriate and would hardly be enforceable in practice, but the lawmakers wished to regulate it in any case.

211. Switzerland is currently considering ratifying ILO Convention No. 138 on the minimum age for admission to employment.

The Child's family name

212. The Swiss Civil Code makes no distinction between children born in marriage and children born outside marriage, with some minor exceptions: a child born to an unmarried couple takes the mother's family name, while a child born to married parents takes the father's. However, a child born outside marriage is able to change his name if there is good reason for doing so (art. 30 of the Civil Code).

213. In 1995, Federal Tribunal practice in relation to changes of name by the children of unmarried parents, was brought more into line with recent developments in the perception of the position of children born outside marriage

(ATF 121 III 145). The Federal Tribunal considered that a "steady partner" relationship between a child's biological mother and father no longer constituted in and of itself grounds for a change of name. Instead, the child should specifically indicate in his application in what way the fact of bearing his mother's family name in accordance with the law put him at a social disadvantage and was therefore grounds for a change of name.

214. A revision of the Civil Code provision on children's family name and cantonal citizenship is being discussed by the National Council's Legal Committee. This Committee has decided not to adopt any regulation giving equality of treatment to children of married couples and children of unmarried couples as regards the family name and cantonal citizenship.

The child's nationality

215. As mentioned in the initial report (para. 449), Switzerland does not recognize the right to naturalization, even for stateless persons.

216. In the legal sense, very few children living in Switzerland are stateless. Legal statelessness applies chiefly to nationals of States whose legislation does not provide for the parents' nationality to be passed to a child born abroad. A number of South American States, including Chile, Colombia, Ecuador and Paraguay, have such rules.

217. For that reason, Switzerland has entered a reservation concerning article 7 of the Convention on the Rights of the Child. The withdrawal of the reservation would require an amendment to the Constitution and to the Federal Act of 29 September 1952 (LN; RS 141.0), on Acquisition and Loss of Swiss Nationality. Such amendments could be made as part of the constitutional reform or by a specific amendment to the Federal Act on Acquisition and Loss of Swiss Nationality. In that regard, it should be noted that, as part of the constitutional reform, the Council of States has adopted a provision facilitating the naturalization of stateless children.

Article 25

Political rights

Right to vote

218. The initial report (para. 459) states that two cantons recognized grounds for deprivation of legal capacity other than mental illness or feeble mindedness, a situation criticized when the initial report was submitted. Since then, the cantons of Schwyz and St. Gallen have abolished these provisions.

Right to be elected

219. Under the current Constitution and the draft reform, only lay citizens can be elected to the National Council. As part of the constitutional reform, both the National Council and the Council of States have abolished that restriction (draft art. 133).

Conduct of elections

220. Switzerland has entered a reservation regarding the requirement for a secret ballot. The reservation was necessary because some cantons, that hold citizens' assemblies ("Landsgemeinde") permit certain elections to be carried out by a show of hands in such assemblies, like all votes on cantonal matters. Only the cantons of Glarus, Appenzell-Inner Rhoden and Obwald still hold "Landsgemeinde". Since the submission of the initial report, the cantons of Nidwald and Appenzell-Outer Rhoden have abolished this form of direct democratic expression. On 29 November 1998, the canton of Obwald will hold a referendum on the abolition of the "Landsgemeinde" (the abolition proposal from the Parliament (Landrat) obtained braod support).

Political rights of foreigners in Switzerland

221. Although the rights guaranteed in article 25 of the Covenant are confirmed to nationals of the State, this section provides a summary of the situation of foreigners' political rights. At the federal level, foreigners have the right of petition in Switzerland (art. 57 of the Constitution). In a postulate of 30 September 1996, the National Council requested the Federal Council to consider the question of the introduction of the right to vote for all foreigners who have been resident in Switzerland for five years.

222. In the cantons of Neuchâtel and Jura as well as having the right to vote, foreigners may be elected to communal expert commissions; they may also become members of the rent or labour tribunals in Jura and of the labour courts in Neuchâtel. In its constitutional reform of 1995, the canton of Appenzell-Outer Rhoden adopted a provision authorizing communes to institute the right of foreigners to vote in communal elections.

223. Foreigners sit on consultative committees which were established by the authorities - all but one of them public bodies - and in which they can express their views on subjects that concern them. Such bodies exist at all levels of the State:

Federal: Federal Commission for Foreigners;

Cantonal: Jura, Neuchâtel, Geneva and Vaud;

Communal: In about 20 communes.

224. In Lausanne, the 13 foreign members out of 42 in the Immigrants Consultative Chamber are directly elected by foreigners by universal suffrage and secret ballot; they also sit on the Communal Commission for Foreigners, which meets 10 times a year and includes 8 members of the communal legislature and is chaired by a member of the local government. The foreign members of the Chamber receive all the official documentation sent to the members of the Communal Legislature.

225. At the national level, one third of the members of the Federal Commission for Foreigners(CFE), appointed by the Federal Council, are of non-Swiss origin and may or may not have Swiss nationality (there is no numeric restriction on the number of foreign members of CFE). CFE's mandate is to advise the Swiss Government on the integration of foreigners in all areas of social life. It

acts as an intermediary in the dialogue between the federal authorities and nearly 70 local aid services for foreigners, as well as the immigrant communities umbrella organizations. In June 1998, an amendment to the OSEE was adopted, give CFE a legal base and authorize the Confederation to provide financial support for the integration of foreigners.

226. Spaniards, Italians and Portuguese in Switzerland directly elect representatives to "emigrés' committees", by universal suffrage and usually by consular district. These ballots give rise to traditional style electoral campaigns. The elected assemblies have a specific mandate to represent émigrés to consulates. They then in turn appoint from among their members representatives of those émigrés to the authorities in the countries of origin.

Article 26

(General) principle of non-discrimination

227. The regulation and implementation of the principle of equality under Swiss law has been dealt with above, mainly in the chapters on articles 2 and 3 of the Covenant.

228. As regards Switzerland's reservation to article 26 of the Covenant, see part III of this report (subject of concern I, paras. 245-248).

Article 27

Minority rights

General

229. The federal Constitution contains no provisions fully reflecting article 27 of the Covenant (see para. 20 of the concluding observations). Nevertheless, the protection of minorities is a matter of great concern to Switzerland, not only at the national level, but also at the international level. Thus, in the internal working group on minority affairs, Switzerland is firmly committed to the implementation by States of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992).

Council of Europe framework Convention for the Protection of National Minorities

230. Switzerland is about to ratify the Council of Europe framework Convention for the Protection of National Minorities, which it signed on 1 February 1995. The Federal Council proposed ratification to the Federal Chambers in November 1997. The parliamentary process should be complete in early autumn and, as there does not appear to be any particular opposition to the Convention, it should be ratified by the end of 1998.

231. As regards the scope of its application in Switzerland, the Federal Council plans to make the following declaration (draft federal decree of ratification, art. 1, para. 1 (a)): "In Switzerland national minorities in the sense of the framework Convention are groups of individuals numerically inferior to the rest of the population of the country or of a canton, whose members are Swiss nationals, have long-standing, firm and lasting ties with Switzerland and are guided by the will to safeguard together what constitutes their common

identity, in particular their culture, their traditions, their religion or their language".

232. This definition adopted by the Federal Council recalls the components of the definition of "national minority" set forth in article 1 of the Council of Europe Parliamentary Assembly's draft additional protocol to the European Convention on Human Rights, dated 1 February 1993 (recommendation 1201 (1993) on an additional protocol to the European Convention for the Protection of Human Rights, concerning persons belonging to national minorities). It also draws on article 2, paragraph 1, of the draft European Convention for the Protection of Minorities, of 4 March 1991, prepared by the European Commission for Democracy through Law (Venice Commission).

233. The definition adopted by the Federal Council thus corresponds to the concept of "national minority" that prevails in the vast majority of other European countries.

234. This definition makes it possible to apply the framework Convention in Switzerland to national linguistic minorities, but also to other minority groups within the Swiss population, such as members of the Jewish community or travellers (see message from the Federal Council on the European framework Convention for the Protection of National Minorities, Feuille fédérale 1998 I, pp. 1033-1071).

235. Lastly, mention should be made of other minorities not covered by the above definition, but who enjoy all the fundamental freedoms guaranteed by the Federal Constitution (and the related federal legislation), the European Convention for the Protection of Human Rights and the Covenant.

Linguistic communities

236. On 23 December 1997, the European Charter for Regional or Minority Languages of 5 November 1992 was ratified by Switzerland and entered into force on 1 April 1998. The languages that Switzerland undertook to protect under this Charter are Italian and Romansh, the two least widely spoken of Switzerland's national and official languages (Feuille fédérale 1997 I, pp. 1105-1136).

237. Recognition of Switzerland's multilingualism and the preservation of its linguistic communities are not only aspects of national identity, but also components of Switzerland's concept of the State and its cultural policy.

238. By approving the new article of the Constitution on languages (art. 116 of the Constitution), on 10 March 1996, the people and the cantons showed their desire to safeguard Switzerland's quadrilingualism and to promote understanding and exchanges among the linguistic communities. This amendment made it possible for Romansh to take its place alongside German, French and Italian as a national and official language of Switzerland in relations between the administration or the judicial authorities and Romansh citizens. The Constitution and a special selection of laws and international treaties are now therefore published in Romansh. The first decision in Romansh was handed down by the Federal Tribunal in June 1996.

239. Moreover, new article 116, paragraph 2, of the Constitution provides that the Confederation may now, in agreement with the cantons, perform other important tasks in the area of the promotion of national languages, in particular with regard to encouraging understanding and exchanges among the national linguistic communities. Draft legislation is being prepared in order to implement this amendment. One bill relates to the use of official languages between and among the Confederation's authorities and administrative departments, as well as in their dealings with the public and the cantonal authorities. The 1995-1997 legislative programme also envisages for the preparation of legislation on the promotion of understanding and exchanges among the linguistic communities (Feuille fédérale 1997 II, pp. 301-334).

240. Article 116, paragraph 3, explicitly empowers the Confederation to support the measures taken by the cantons of Graubunden and Ticino to promote Romansh and Italian. Such support has steadily increased in recent years, since the amendment of the Federal Act on Financial Assistance for the Protection and Promotion of the Romansh and Italian Languages and Culture of 6 October 1995 (RS 441.3), which entered into force on 1 August 1996. The amendment aims to increase federal financial aid to Romansh and Italian, thereby enabling the cantons, communes and organizations involved to strengthen their action in the area of language policy (Feuille fédérale 1995 II, pp. 1185-1204).

241. In the draft constitutional reform, the Federal Council proposed to include freedom of language in the list of fundamental rights for the first time (draft art. 15) and, in addition, to implement the principle of territoriality that protects the country's traditional linguistic landscape from artificial or unnatural modification in the chapter on areas of jurisdiction (draft art. 83).

Cultural minorities

242. With regard to travellers, a cultural minority in Switzerland, the Confederation established a Foundation on 1 May 1997 called "Ensuring the Future of Swiss Travellers". A decree adopted some years ago by the Federal Parliament set out the essential legislative and financial basis for the establishment of the Foundation. Its purpose is to facilitate the search for solutions to the main problems encountered in Switzerland by travellers i.e., the problems of caravan sites, licences and children's education. The Foundation will serve primarily as a forum in which the representatives of travellers, communes, cantons and the Confederation will be able to work together to find solutions. Another of its tasks will be to act as an intermediary in resolving specific problems. The Foundation also has a mandate to raise public awareness of the situation of travellers through various projects.

243. CFE and the Conference of Cantonal Directors of Public Education called a national conference in June 1998 to discuss the extra classes on the language and culture of students' countries of origin that are given in Swiss schools. It brought together the main partners involved: representatives from the diplomatic, educational, scientific and economic fields and immigrant and foreign parents' associations. Its discussions confirmed that such courses were important for the society and economy of the host country, the unity of migrant families and the development of their children. As organizers, the

Confederation and the cantons then became spokespersons for the participants in encouraging the Swiss education system and economy to make more of this contribution.

Religious minorities

244. According to the 1998 Swiss Statistical Yearbook, the population as of the 1990 national census showed the following distribution by religion: Roman Catholic, 46.1 per cent; Protestant, 40 per cent; Old Catholic, 0.2 per cent; Orthodox, 1 per cent; Muslim, 2.2 per cent; Jews, 0.3 per cent; other religions, 1.3 per cent; no religion, 7.4 per cent.

PART III

REPLIES TO THE SUBJECTS OF CONCERN RAISED BY THE COMMITTEE IN ITS CONCLUDING OBSERVATIONS OF 8 NOVEMBER 1996

(concerning the presentation of the initial report of Switzerland)

I. Switzerland's reservation to article 26 of the Covenant (paras. 11 and 21 of the concluding observations)

245. In its observations, the Committee expressed regret at the maintenance of Switzerland's reservation to article 26 of the Covenant, which limits the applicability of the principle of the equality of all persons before the law and of the prohibition of discrimination to only those rights which are contained in the Covenant. The Committee suggests that the Swiss authorities should seriously consider withdrawing the reservation "so that the article may be implemented, in the spirit of the Covenant, as an autonomous right guaranteeing non-discrimination in all spheres regulated and protected by the State".

246. On this matter, it is necessary to refer to the grounds invoked in paragraphs 483 to 485 of the initial report, concerning which the following developments may be cited.

247. With regard to discrimination against women (end of para. 483 of the initial report), it should be noted (as already mentioned in the chapter relating to article 3 of the Covenant) that most of the rules providing for differences in treatment between men and women have been abolished (in the law on aliens, for example, or on marriageable age) or are in the course of being revised (for example, the part of the Civil Code dealing with family law). As regards the exercise of social, economic and cultural rights (end of para. 485 of the initial report), Switzerland's initial report of 26 June 1996 on the International Covenant on Economic, Social and Cultural Rights sets out the situation and the efforts made to remedy it.

248. One of the reasons cited in the initial report, in connection with the principle of non-discrimination guaranteed under article 14 of the European Convention on Human Rights - a principle which has no independent scope - is that Switzerland avoids creating different levels of protection in international instruments covering similar ground. However, Switzerland is playing an active role in the meetings of the Committee of Experts of the Council of Europe which

is drawing up an additional protocol to the European Convention generally broadening the scope of article 14 of that Convention. The outcome of these efforts will probably have a direct impact on the decision whether to maintain Switzerland's reservation to article 26 of the Covenant.

II. Equality between men and women (particularly in the private sector) (paras. 12 and 23 of the concluding observations)

249. The Committee noted with concern that, in many areas, equality between men and women had allegedly not yet been achieved in practice (including access to higher education, access to posts of responsibility, equal remuneration for work of equal value and participation in household tasks and in the upbringing of children), particularly in the private sector.

250. A number of steps have been taken recently in Switzerland to achieve equality between the sexes, as described above in Part II of the report (on article 3, paras. 42-78) (cf. the Federal Act on Equality between Men and Women, the proposed revision of the Civil Code, participation by women in politics, temporary and permanent residence, offices to promote equality, the Federal Commission for Women's Issues, etc.). The effects of these measures should be even more strongly felt in the coming years.

251. A working party was set up within the federal administration following the Beijing Conference in 1995 with the task of drawing up a plan of action on steps to be taken in Switzerland to foster equality between men and women. This plan of action is scheduled to be published during the autumn of 1998. It will undoubtedly provide some answers to the concerns raised by the Committee.

(a) Access to higher education

252. According to the latest report issued by the Federal Commission for Women's Issues (June 1995), Swiss women are still under-represented in the category of persons with university training, even if, overall, they have to a large extent caught up over the past 20 years: almost half of all school-leaving certificates are now awarded to women and the proportion of female university students has risen to 40 per cent.

253. The report notes in particular that women are still markedly under-represented among the teaching staff of universities and advanced institutes, despite the fact that their share of university teaching posts has doubled in the past 10 years. The federal polytechnics in Lausanne and Zurich, where the proportion of female students is lowest, have taken steps to raise the proportion of women at all levels, including the adoption of a plan of action, guidelines, preference given to female candidates, etc.

(b) Access to posts of responsibility

254. The report mentioned above notes the over-representation of women in the lower ranks of the professional hierarchy and under-representation at the higher levels. Part of this inequality can be explained by the differences in levels of training between the sexes (in its conclusion, the report nevertheless notes a constant improvement in the level of training among women). Another factor which adversely affects the professional situation of women is the fact that

they are over-represented in part-time jobs (which generally do not offer the same promotion and career opportunities as full-time jobs). Further efforts are therefore required to improve women's access to posts of responsibility.

255. As mentioned before, as part of financial support for measures to improve the supply of apprenticeships, emphasis is to be placed on a campaign of motivation for women and equality of opportunity between the sexes (the Confederation has allocated SF 60 million for training in the years 1997, 1998 and 1999). The Swiss Conference of Delegates for Equality has also prepared a project, in the context of the federal decree on training opportunities, designed to improve the situation with regard to apprenticeships for young women.

(c) Equal remuneration for work of equal value

256. Regarding concern expressed on this matter by the Committee, attention should be drawn to the system of protection guaranteed under the Federal Act on Equality, which entered into force on 1 July 1996.

257. The principal purpose of this Act is to foster respect for the right to equal pay and, more generally, to ensure equality of the sexes at work. It applies to all male and female workers in Switzerland, both in the public sector and in the private sector.

258. The Act contains a blanket ban on discrimination on grounds of sex. The ban applies not only to pay, but also to working relations as a whole (in particular, recruitment, allocation of tasks, organization of working conditions, vocational training, promotion and abrogation of working relations). It covers all forms of direct or indirect discrimination, and especially discrimination based on civil status, family circumstances or pregnancy (art. 3). This prohibits not only differences in pay for the same work, but also differences in pay for work of equal value. Sexual harassment in the work place is also prohibited (art. 4).

259. Anyone who suffers or may potentially suffer discrimination with regard to wages may apply to a court to halt the discrimination and order payment of the wages due (art. 5). The court may also order payment of the difference in wages due for a past period, subject to a maximum of five years.

260. Protection against dismissal has also been strengthened under the Act on Equality. Termination of a labour contract may be annulled by a court if the termination is not based on substantiated grounds and if it follows a complaint addressed to the enterprise, the initiation of a conciliation procedure or the bringing of judicial proceedings. The applicant is protected against dismissal throughout these procedures or proceedings, as well as for six months following their completion. A person wishing to contest the termination of his or her labour contract must refer the matter to the court before the end of the period of notice. When there is a presumption that the conditions are met for the dismissal to be cancelled, the court may order the temporary re-engagement of the worker pending completion of the procedure (art. 10).

261. The Act on Equality also provides for a variety of measures designed to facilitate the application of the right to equality between men and women. The

most important of these is the easing of the burden of proof, so that it is now sufficient for the person alleging discrimination to give a probable indication of it. Discrimination is then presumed to have occurred and the onus is on the employer to prove that he or she has not violated the ban on discrimination. If the employer fails to do so, he or she must suffer the consequences of the absence of proof. This easing of the burden of proof applies to pay, the allocation of tasks, the organization of working conditions, vocational training, promotion and the abrogation of working relations (art. 6).

262. The right of women's or trade union organizations to take action on their own initiative to have the existence of discrimination recognized is another important provision of the Act on Equality. This right is enjoyed by women's or trade union organizations which have been established for at least two years, when it appears likely that the outcome of the proceedings will affect working relations in a substantial number of cases (art. 7).

263. The application of the right to equality is also facilitated by the fact that the proceedings are free of charge. Cost may act as a deterrent to instituting legal proceedings. The Act on Equality deals with this deterrent by providing that proceedings are free of charge, whatever the sums involved. It also guarantees the right of the parties to be represented (art. 12). In order to enable disputes to be settled amicably, the cantons must establish an optional free conciliation procedure (art. 11).

(d) Participation in household tasks and in the upbringing of children

264. Little information on household tasks is available in Switzerland. A set of questions on "unpaid work" was included for the first time in the Swiss survey of the working population in 1997. This interview module lasting about five minutes enabled information to be gathered on the various types of unpaid work (domestic work, volunteer work or work in honorary positions) and on the amount of time devoted to it. These questions will be put again every three years. The 1997 results indicate that on average women devote almost twice as much time to household tasks as men.

265. In the context of the financial assistance provided for by the Act on Equality, the Confederation supported several projects, some of which focused on the last of the Committee's concerns in the field of equality between men and women:

Project for a series of video tapes on the theme "Allocating roles in a spirit of partnership";

The "Integra II" project (run by the Mothers' Centre in the city of Berne), offering jobs for parents with their children (with the aim of helping participants to rejoin the work force in the future);

Project to foster recognition of the many skills acquired in performing family and household tasks and to promote the transfer of such skills into the world of work;

Project to provide child care facilities in the canton of Aargau.

III. Allegations of ill-treatment in the course of arrests or in police custody, particularly in respect of foreign nationals (paras. 13 and 24 of the concluding observations)

266. It has been found that complaints regarding ill-treatment often come from foreign nationals. It should be pointed out, however, that, in the different reports on the question, the cantons Geneva and the Ticino, i.e. border cantons, as well as the canton of Zurich. Moreover, these cantons have an airport and the proportion of foreigners living in them is very high. Over 39 per cent of the Geneva population, for example, is made up of foreigners; about 60 per cent of the persons arrested are foreigners, many of whom are temporary visitors. Statistically it is therefore understandable that many of the complaints are filed by foreigners.

267. In this regard, it should be pointed out that, according to police statistics on crime, the proportion of foreign offenders stood at 51.5 per cent in 1997. Statistics on criminal convictions in Switzerland show that between 1992 and 1996, more than 40 per cent of sentences were handed down against foreigners (one third of whom were living abroad).

268. The use of force during the course of an arrest must nevertheless be kept to the bare minimum and, once a person has been brought under control, there is no justification for police brutality. These are basic principles and rules of ethics which are well known to the security forces and about which they are nonetheless reminded at every opportunity.

269. With regard to the canton of Geneva, the CPT (see report to the Federal Council on the CPT visit to Switzerland from 11 to 23 February 1996, para. 16, p.12) welcomed the many measures adopted by the police, since its first visit, to prevent ill-treatment, heighten police awareness of human rights, manage stress and improve relations among different ethnic groups. One of the measures adopted relates to the obligation to include information in police reports on the possible use of force, the availability of a doctor from the University Institute of Forensic Medicine and the appointment of an impartial investigator when a complaint is filed. The CPT concluded its report with the request that similar measures should be adopted throughout Switzerland.

270. In its progress report of 2 June 1997 in response to the above-mentioned CPT report (p. 5), the Federal Council stated that it fully agreed with the CPT's view that measures similar to those adopted in Geneva should also be adopted in all Swiss cantons as part of efforts to prevent ill-treatment. It nevertheless recalled that the adoption of such measures is the responsibility of the cantons, to which the CPT's request would be communicated. It should also be noted that the Geneva police has had a code of ethics since August 1997.

271. Individual applications submitted to the European Commission on Human Rights in respect of violations of article 3 of the European Convention on Human Rights were all declared inadmissible or unfounded, except for one, which was removed from the list by the Court.

IV. Absence of independent machinery in the cantons for recording and following up complaints of ill-treatment by the police (paras. 13 and 24 of the concluding observations)

272. When reference is made to ill-treatment by the police, it is alleged that criminal offences have been committed, including bodily injury, assault and battery, racial insults and racial discrimination, threats, coercion and abuse of authority. Such offences, which necessarily involve abuse of authority, are automatically prosecuted and are punishable under criminal laws. The facts are investigated by a public prosecutor, examined by the examining magistrate and ruled on by a court. The ruling in first instance or the decision to dismiss the case may be appealed at the cantonal level and then in the Federal Tribunal. The same is true of civil proceedings, which the injured party may institute to obtain compensation for material and non-material damage (arts. 41 et seq. of the Swiss Code of Obligations), and of disciplinary proceedings brought by the competent authority. These remedies appear to be sufficient. It therefore does not seem absolutely necessary to set up a new institution within the system of civil and criminal justice because it would be an addition to existing procedures and would thus call into question the independence and impartiality of the courts having jurisdiction in this regard.

V. Incommunicado Detention (paras. 13 and 24 of the concluding observations)

273. Legislation on criminal procedure in some French-speaking Swiss cantons expressly provides that a detainee's freedom of communication may be temporarily restricted when there is a danger of collusion, when this measure is imposed for the purpose of the preliminary investigation and when it is in keeping with the principle of proportionality, the person concerned may appeal to a judicial authority. It must be stressed that this possibility of the temporary restriction of a detainee's rights to have contact with third parties - a possibility which exists in other cantons as well - has nothing to do with what was known as "incommunicado detention" which, until 15 years ago in a number of cantons, was understood to be a lawful means of putting pressure on a detainee to make him cooperate with the judicial authorities - and even confess. Conditions of detention in the case of often harsher than usual. This explains why it was sharply criticized by writers on law, who sometimes even called it a modern-day substitute for torture. Incommunicado detention in this form and for this purpose was soon abandoned by all Swiss cantons without exception. The unfortunate fact that this expression continues to appear in three cantonal codes of criminal procedure is beside the point. In addition, the restrictions imposed on a detainee can never go so far as total isolation. As the European Commission of Human Rights stated in a case concerning Switzerland, "total sensory isolation combined with social isolation can destroy a personality and is a form of inhuman treatment which cannot be justified by security requirements or for any other reasons"(report by the Commission, 1 July 1993, in the Abdelaziz Bouajila case). Consequently, a detainee may have contact with his lawyer, under supervision, if necessary, at least in order to exercise his right of appeal and, when he is being held in pre-trial detention, to prepare his defence.

274. It should be pointed out that such restrictions on contact by a detainee with third parties are very rarely ordered and, contrary to what is stated in

paragraph 13 of the Committee's concluding observations, never for indefinite periods.

275. The concept paper on the unification of criminal procedure in Switzerland does not use the expression "incommunicado detention".

VI. Immediate notification of arrest to family and friends, possibility of contacting a lawyer immediately after arrest,examination by an independent doctor at the commencement of police custody (Paras. 13 and 14 of the concluding observations)

276. The Swiss Government is not aware of the practical difficulties which are referred to by the Committee (para. 13 of the concluding observations) and which detainees encounter in informing their family or friends of their arrest. As the Swiss Government has already maintained in the CPT and the Committee against Torture, it may even be said that this requirement is now being met without any difficulty in practice. An increasing number of cantonal codes of criminal procedure expressly contain a provision stipulating that, in substance, any person who has been arrested must be advised of his right to inform his family and friends, or have them informed, of his arrest. This is the case of the codes of criminal procedure of the cantons of Berne (art. 174, para. 3), Valais (art. 71, para.1), and Fribourg (art. 109, entry into force is scheduled for 1 December 1998). The above-mentioned bill on federal criminal procedure (see part II of the present report, on article 14, para. 135) also contains a comparable provision (art. 45, para. 5). Yet even in cantons where the code of criminal procedure does not so stipulate, the right to inform family and friends after arrest is directly guaranteed by unwritten consitutional law on freedom of person and by article 8 of the European Convention on Human Rights and article 18 of the Covenant, since any refusal to notify family and friends would constitute interference in the right to respect privacy and family life. The concept paper on the unification of criminal procedure also establishes the right of an arrested person held in pre-trial detention to notify his family and friends of his detention, this right being applicable by analogy to police custody as well.

277. In respect of the right to the assistance of counsel following arrest, certain recent cantonal regulations provide for the right to inform counsel of the arrest and of the grounds for the arrest (for example, art. 174, para. 3, of the Berne Code of Criminal Procedure), as well as for the obligation to make detainees in police custody aware of their right to remain silent. Suspects are also entitled to state they are willing to speak only before an examining magistrate. They must be informed of these rights prior to questioning. This regulation gives effect to the recommendation by the Committee, which emphasized "the need to allow suspects to contact a lawyer" (para.24). The concept paper also endorsed this recommendation by proposing that a person in police custody should be informed of his right to contact a lawyer.

278. At present, however, it is hardly possible fully to agree that it should be possible not only to contact a lawyer, but also to be assisted by a lawyer during the first period of questioning. Switzerland's reserved attitude in this regard does not differ from the view of the majority of European States. The

draft additional protocol to the European Convention on Human Rights on the rights of persons deprived of their liberty that is currently being drawn up does not provide absolute guarantees of the right to be assisted by a lawyer during police custody.

279. In respect of access to an independent doctor, the Federal Council indicated in its reply to the last CPT report that " the right of an arrested person to receive the care required by his state of health and to be examined by an independent doctor on request is recognized without restriction in Switzerland". The respect for this right in practice was broadly confirmed in the observations made during the CPT visit in 1996. Police custody is an urgent and short-term measure. Doctors who are called in therefore have to be available immediately. Most cantons have organized a system of doctors on-call. In each case, the doctor sent to treat the detainee is a licensed physician who is bound by the Hippocratic oath and is therefore independent, his sole concern being the patient's health. An example is recent regulation adopted by the canton of Geneva which provides that the person in police custody and the police may request a medical examination at any time during or after the period of custody.

VII. Pre-trial detention for several days in police stations (paras. 14 and 25 of the concluding observations)

280. Detainees should not be held for several days in police cells. On this point, the CPT expressed the same concerns as the Committee. Considerable efforts have been made in several cantons, including Berne, Zurich, Valais, Vaud, Ticino and Geneva, and the situation has now been straightened out. The occupancy rate of pre-trial detention centres has, moreover, fallen.

281. According to the blueprint for the unification of criminal procedure, moreover, no one may be held in police custody for longer than 24 hours, non-renewable; this corresponds to the legislation in most cantons.

VIII. Assistance of an interpreter (paras. 16 and 27 of the concluding observations)

282. With regard to the concern expressed in paragraph 16 of the concluding observations, the Swiss Government believes that there has been a misunderstanding. The rule contained in article 14, paragraph 3 (f), of the Covenant is expressly stated in no fewer than 24 of 26 cantonal codes of criminal procedure. In the cantons of Zug and Graubünden, the rule is customary in nature, but the right to the assistance of an interpreter is respected in the same way as in the other cantons. To this must be added, as the Committee noted with satisfaction, that "although the Federal Constitution does not contain a provision concerning the guarantee of a fair trial, the Federal Tribunal has in its decisions ruled that all necessary guarantees follow from article 4 of the Constitution" (para. 9 of the concluding observations). It is therefore of little importance that the rule of assistance concerning the assistance of an interpreter is not expressly stated in a canton's code of criminal procedure, since provisions taking precedence over cantonal legislation can be applied directly, and it is not surprising that the guarantee of the assistance of an interpreter has not given rise to any problems in practice.

IX. Administrative detention of foreign nationals on the basis of the Federal Act on Coercive Measures (paras. 15 and 26 of the concluding observations)

283. During the discussion of the initial report, the Committee expressed concern about the Federal Act on Coercive Measures in relation to the law on aliens (para. 15 of the concluding observations). Even though the situation has not changed, information in addition to that given during the oral presentation of the initial report is therefore being provided.

284. Before the entry into force of the coercive measures provided for in the Act on the Temporary and Permanent Residence of Foreigners, the period of detention pending expulsion was limited to 30 days. It became apparent in the early 1990s, however, that the Act was inadequate in a growing number of cases because a large number of foreigners avoided expulsion by going into hiding. In addition, practice showed that the maximum period of detention provided for in the Act was too short. It takes a great deal of time to organize a departure, in particular to obtain travel papers, not to mention the fact that the foreigner's lack of cooperation greatly complicates the work of the authorities. In order to cope with the problem, the federal authorities opted for internment, the only means of dealing effectively with the tactics of certain foreigners who concealed their identity for the obvious purpose of avoiding the enforcement of an expulsion order.

285. Internment, was however, not designed to be applied in such a context. Its conformity with international instruments, particularly article 5 of the European Convention on Human Rights, was debatable. A bill providing for detention pending expulsion, together with judicial review, was therefore drafted in order to achieve this objective. The provisions on internment were thus repealed by the entry into force of the Federal Act on Coercive Measures on 1 February 1995.

286. The maximum period of detention is now three months (art. 13 (b) of the LSEE). With the consent of the cantonal judicial authorities, it can be extended by six months. The maximum period of detention can thus in no case exceed nine months (and not, as the Committee states, one year). That period is in most cases sufficient to identify the person and draw up the papers required for the expulsion. In the exceptional cases in which that is not so, the person must be released.

287. However, if it appears that the foreigner cannot, for legal or material reasons, be expelled or repatriated during the maximum period of detention, he must be immediately released. Detention with a view to repatriation is lawful only insofar as it seems highly probable that that objective will be achieved.

288. The fear that members of the cantonal Aliens Registration Offices can now arrest foreigners randomly and on mere suspicion is groundless. The necessary precautions have been built into the Act. On the one hand, it is not possible to order any measure, but only those exhaustively listed in the Act. On the other, there must be a judicial review of the lawfulness and adequacy of those measures within 96 hours. Moreover, requests for release from detention are reviewed regularly. Lastly, remedies may be applied for up to the Federal Tribunal.

289. Coercive measures are thus administrative measures designed to guarantee the enforcement of expulsion orders concerning asylum-seekers whose requests have been turned down and foreigners who are in the country illegally. They do not replace penalties handed down against foreigners committed a criminal offence. The cantonal administrative authorities must thus be able to order measures whose lawfulness and fairness are subsequently reviewed by an independent judge. In a decision of 16 February 1998 (ATF 124 IV 1), the Federal Tribunal specified that the period spent in detention pending expulsion must in principle be deducted from the custodial sentence. According to the Federal Tribunal, this holds true in any case when the conditions for pre-trial detention have been met and detention pending expulsion replaces pre-trial detention.

290. The Committee notes with concern that judicial review of detention pending expulsion was carried out during a period that could be as long as 96 hours, whereas, in criminal matters, such a review is guaranteed after 24 or 48 hours, depending on the canton concerned. It would appear that the Committee's comparison is based on a misunderstanding. Indeed, the 24-hour or 48-hour time-limit in criminal matters is for the initial summary review of the admissibility of detention by a judge or other officer authorized by law (art. 9, para. 3, of the Covenant; art. 5, para. 3, of the European Convention), whereas the 96-hour time-limit is for the review of lawfulness by a court. Judicial review in criminal matters should therefore not be compared to the procedure provided for in article 9, paragraph 3, of the Covenant (or art. 5, para. 3, of the European Convention), but to that provided for in article 9, paragraph 4, of the Covenant (art. 5, para. 4, of the European Convention; see ATF 121 I 53: the Bernese examining magistrate is not a "judicial authority" within the meaning of article 13 (c), paragraph 2, of the LSEE). A 96-hour time-limit cannot be considered excessive for a genuine judicial review.

291. In paragraph 26 of the concluding observations, the Committee recommends that measures should be taken to ensure that foreigners are informed in a language they understand of the remedies available to them and are assisted by counsel. This recommendation has always been taken into account by the Swiss authorities. In the procedure ordering detention, the foreigner is always informed, as soon as possible and in a language he understands, of the reasons for his arrest. If necessary, an interpreter is made available. The written justification for the detention order may be given in the official language of the canton concerned. Although there is no right to a written translation, the Aliens' Registration Office and the prison administration must ensure that the foreign detainee has not only received the decision containing, inter alia, the remedies available, but also that he has understood the content thereof (ATF of 9 August 1996, B.L. v. Aliens' Registration Office of the canton of Zurich and Zurich District Court).

292. According to article 13 (c), paragraph 2, of the LSEE, the detention order must be reviewed by a judicial authority following compulsory oral proceedings which the foreigner cannot waive. The requirement of oral proceedings shows that the lawmakers did not consider that a simple hearing of the detainee was enough. Here, too, an interpreter is made available if required.

293. According to article 13 (d), paragraph 1, of the LSEE, the detainee must be able to speak to and correspond with his counsel. The Federal Tribunal

concludes from this provision and from article 4 of the Constitution (right to be heard) that the foreigner has the right to be assisted by counsel in the proceedings ordering the detention and in the detention review proceedings.

294. The question whether a destitute foreigner has the right to legal aid is not considered by the law. In its case law, the Federal Tribunal specified that legal aid cannot be refused to a destitute foreigner detained pending expulsion, at least not during the proceedings to extend detention (ATF 122 I 49, preambular paras. 2 (c) and (d)). With regard to the review proceedings for detention pending expulsion, some cantons (for example, Vaud and Zug) expressly provide for the right to legal aid.

X. Decision of 24 February 1948 on political speeches by foreigners (paras. 17 and 28 of the concluding observations)

295. The Committee recommended that the Federal Decree of 24 February 1948 on Political Speeches by Foreigners should be repealed or amended so as to bring it into line with article 19 of the Covenant relating to freedom of expression. The Federal Council repealed the Decree on Political Speeches by Foreigners on 9 March 1998, effective 30 April 1998.

XI. Family reunification of foreign workers (paras. 18 and 29 of the concluding observations)

296. The Committee notes that family reunification is not authorized immediately for foreign workers who settle in Switzerland, but only after 18 months. In the Committee's view, this is too long a period for the foreign worker to be separated from his family.

297. Family reunification for foreign workers residing in Switzerland has never been subject to a waiting period of 18 months, but 12 months. The Federal Council abolished the one-year waiting period on 23 October 1993, when it amended its Order of 6 October 1986 limiting the number of foreigners (RS 823.21).

298. However, seasonal workers (permit valid for nine months) are not entitled to family reunification. Seasonal workers status may be abolished in the near future.

XII. Adoption abroad (paras. 19 and 30 of the concluding observations)

299. The Committee expresses concern at the requirement for persons adopting a child abroad under the regime of simple adoption to submit an application for full adoption in Switzerland if they wish the adoption to be recognized in Switzerland. This procedure makes final adoption subject to a two-year trial period, during which the adoptive parents may decide not to go ahead with the adoption and the child is entitled only to a temporary, renewable residence permit. The Committee recommends that the necessary legislative measures should be taken to ensure that children who have been adopted abroad are granted, on arrival in Switzerland, either Swiss nationality if the parents are Swiss or a

temporary or permanent residence permit if the parents have such a permit and that the two-year trial period prior to the granting of adoption should not apply to them.

300. The Committee's observations and recommendations require a qualified reply. In the first place, a distinction must be made between adoptions abroad that can be recognized in Switzerland and those that cannot.

301. In the absence of an international treaty, an adoption abroad can be recognized in Switzerland if it was finalized in the State of residence of the adoptive parents or in their national State (art. 78, para. 1, of the Federal Act on Private International Law (LDIP; RS 291)) and if the other conditions for recognition in Switzerland of an adoption abroad have been met (arts. 25 to 27, 31 LDIP). According to the present school of thought in Switzerland, an adoption abroad can be recognized in Switzerland even if there was no probationary period or if the probationary period was shorter than under Swiss law.

302. Thus, as soon as the adoption has been recognized in Swiss law, the adopted child benefits under the legislation on aliens from the same rights as natural children. Children under the age of 18 adopted by the holders of a permanent residence permit are granted permanent residency (art. 7, para. 2, of the LSEE) and children under the age of 18 adopted by the holder of a temporary residence permit benefit from temporary residency (arts. 38 and 39 of the Order limiting the number of foreigners (OLE; RS 823.21). Children who do not acquire Swiss nationality are in principle entitled, after a period of 12 years, to request authorization to be naturalized (art. 15, para. 1, of the Federal Act of 29 September 1952 on Nationality (LN). Since the years between the ages of 10 and 20 count double, a request for naturalization can be made after six years of residence in Switzerland (art. 15, para. 2, of the LN). If the child was adopted abroad by a Swiss citizen and the adoption is recognized in Switzerland as a full adoption, the child acquires cantonal and communal citizenship on adoption and Swiss nationality thereby (art. 7 of the Federal Act on the Acquisition and Loss of Swiss Nationality).

303. It may therefore be said that, in very many cases, the adoption becomes official well before the end of the two-year period.

304. The situation is different if the adoption cannot be recognized in Switzerland. In such a case, the adoptive parents can apply to have full adoption granted in Switzerland. For full adoption to be granted, the conditions of private international law (arts. 75, para. 1, and 77, paras. 1 and 2, of the LDIP) and internal Swiss law, particularly the completion of a two-year probationary period (art. 264 CCS), must be met.

305. Before being able to bring a child born abroad to Switzerland with a view to adopting it, the adoptive parents must request a prior authorization for that purpose from the competent authorities in their place of residence in Switzerland. According to the OLE, such authorization can be granted to a foreign infant if the conditions of the Swiss Civil Code on the placement of children and adoption are met. The child is then granted an authorization to enter the country and a yearly residence permit, which is issued until the adoption is final.

306. If the adoption is not finalized and if a further placement also fails, the temporary residence permit granted under article 35 of the OLE cannot be extended. There have been very few cases in which placements with a view to adoption have failed. when this does happen, however, the authority authorizes the child to remain in Switzerland temporarily on the basis of articles 36 or 13 (f) of the OLE. It is standard practice that such children are no longer subject to federal control if they have been lawful residents for an uninterrupted period of five years. In general, they therefore obtain permanent residence permit after five years. To date, there has been no case of forced return. In addition, article 21 (c) of the Hague Convention (see para. 308 below) provides that, in the last resort, a child should be returned to its State of origin if his or her interests so require.

307. There are, moreover, plans to amend the Swiss Civil Code by reducing the probationary period from two years to one year. Article 264 of the Swiss Civil Code would then read: "A child may be adopted if the future adoptive parents have provided him with the and education for at least one year and if it seems probable in the circumstances that the establishment of a link of filiation is in the child's interest and would not place the adoptive parents' other children, if any, at an unfair disadvantage".

308. On 16 January 1995, Switzerland signed The Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption. The consultation procedure concerning the Convention and the preliminary bill relating to it ended on 30 June 1997 and work on ratification has begun. These two procedures are aimed at institutionalizing cooperation between the authorities of the State of origin and the receiving State, thereby strengthening the protection of children. They propose, inter alia, measures to combat abuse, such as trade in children. The federal bill does not stipulate that children are entitled to a permanent residence permit on arrival in Switzerland. In view of criticism expressed during the consultation procedure, the question of the status vis-à-vis the Aliens' Registration Office of children entering Switzerland for adoption will be reconsidered in depth during the overall revision of the LSEE.

XIII. Protection of minorities (para. 20 of the concluding observations)

309. Although the Federal Constitution contains no provisions reflecting article 27 of the Covenant, the protection of minorities is a matter of constant concern to Switzerland (see the chapter in Part II of the present report on art. 27, paras. 229 to 254).

310. It may be recalled that the minorities referred to in article 27 of the Covenant enjoy all the fundamental freedoms guaranteed by the Federal Constitution (and the federal laws derived therefrom), the European Convention on Human Rights and the Covenant. In this respect, no distinction is made between persons who belong to minorities and have Swiss nationality and those who do not have Swiss nationality (see the chapter in Part II of the present report on art. 27, para. 235).

List of abbreviations

Legal texts

CCS	Swiss Civil Code, dated 10 December 1907
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms, dated 1 November 1950
COS	Swiss Code of Obligations, dated 30 March 1911
CPS	Swiss Penal Code, dated 21 December 1937
C	Federal Constitution of the Swiss Confederation, dated 29 May 1874
EIMP	Federal Act on International Mutual Assistance in Criminal Matters, dated 20 March 1982
LA	Federal Asylum Act, dated 5 October 1979
LAM	Federal Health Insurance Act, dated 18 March 1994
LAVS	Federal Old Age and Survivors' Insurance Act, dated 20 December 1946
LE	Federal Equality Act, dated 24 May 1995
LN	Federal Act on Acquisition and Loss of Swiss Nationality, dated 29 September 1952
LPD	Federal Act concerning the Protection of Data, dated 19 June 1992
LDIP	Federal Act on Private International Law, dated 18 December 1987
LSEE	Federal Act on the Permanent and Temporary Residence of Foreigners, dated 26 March 1931
LTR	Federal Act on Work in Industry, Crafts and Commerce, dated 13 March 1964
OJF	Federal Judicial Organization Act, dated 16 December 1943
OLE	Order Limiting the Number of Foreigners, dated 6 October 1986
PPF	Federal Act on Criminal Procedure, dated 15 June 1934

Compilations of legislation case law, messages from the Federal Council

ATF	Recueil Officiel des arrêts du Tribunal fédéral suisse (Official Compendium of Swiss Federal Tribunal Decisions)
FF	Feuille fédérale (Official Journal of the Confederation)

RO	Recueil officiel des lois fédérales (Official Compendium of Federal Statutes)
RS	Recueil systématique du droit fédéral (Systematic Compendium of Federal Law)

Federal departments, international organizations, committees and commissions

CAT	United Nations Committee against Torture
CERD	United Nations Committee on the Elimination of Racial Discrimination
CFE	Federal Commission on Foreigners
CFQR	Federal Committee on Women's Issues
CFR	Federal Commission against Racism
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRA	Swiss Asylum Appeals Commission
DFAE	Federal Department of Foreign Affairs
DFE	Federal Department of Economic Affairs
DFJP	Federal Department of Justice and Police
ILO	International Labour Organization

Documents

The Federal Constitution, the draft revised Federal Constitution and all the legal texts and documents cited or mentioned in the present report can be obtained from the Federal Office of Justice, International Affairs Division, 3003 Berne.